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NATIONAL DEFENSE UNIVERSITY

JOINT FORCES STAFF COLLEGE

JOINT ADVANCED WARFIGHTING SCHOOL

A MARITIME APPROACH TO COUNTERING HORN OF AFRICA PIRACY

by

Ronald W. Toland Jr.

Commander, United States Navy

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A paper submitted to the Faculty of the Joint Advanced Warfighting School in partial satisfaction of the requirements of a Master of Science Degree in Joint Campaign Planning and Strategy. The contents of this paper reflect my own personal views and are not necessarily endorsed by the Joint Forces Staff College or the Department of Defense.

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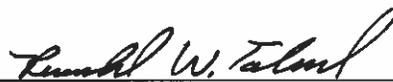
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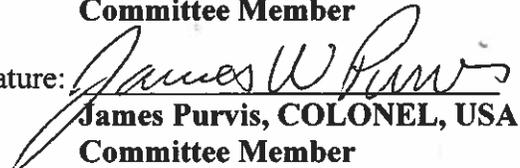
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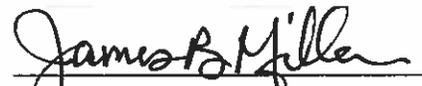
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ABSTRACT

Piracy in the waters off the Horn of Africa (HOA) has become a multi-million dollar venture annually for modern day pirates because vessel ownership groups continue to pay ransoms. The seizing of cargo ships and ransom demands have harmful economic impacts to companies and countries. Piracy operations directly threaten U.S. interests and citizens, as displayed during a recent kidnap for ransom action that led to the deaths of four Americans. In addition, piracy affects global trade. Despite significant multi-national counter piracy efforts, which has included U.S. agencies and military forces, merchant vessels continue to be pirated regularly.

Piracy off the coast of Somalia exists largely because Somalia is a failed state with little to no rule of law or domestic law enforcement capability. The economic situation of the people living in Somalia is dire. A lack of viable employment opportunities, a shortage of arable land, continuing drought, and increasing competition from other nations fishing off the coast, have all affected the standard of living.

The conventional wisdom is that the solution lies ashore; meaning the establishment of good governance and economic development in Somalia, but the international community has displayed no interest to engage in nation building. This thesis will describe the challenges and ineffectiveness of current multi-national counter piracy operations and discuss how the international community can best combat piracy in the HOA region from a maritime perspective. By reviewing how states have historically responded to piracy and examining international legal approaches, the author will propose a multi-tiered coalition-based naval force solution, which uses all the traditional advantages of naval power to eliminate piracy without resorting to nation building.

ACKNOWLEDGEMENT

TABLE OF CONTENTS

INTRODUCTION

This thesis will describe the challenges and ineffectiveness of current multi-national counter piracy operations and discuss how the international community can best combat piracy in the Horn of Africa (HOA) region from a maritime perspective. By reviewing how states have historically responded to piracy and examining international legal approaches to piracy, the author will propose a multi-tiered coalition naval force solution, backed by international law, which uses all the traditional advantages of naval power to eliminate the threat of piracy to commercial shipping around the HOA. Although an increasingly dangerous threat to world commerce, the current international response to piracy falls far short of truly effective action. The following vignette illustrates the basic problem.

In the waters off the coast of Salalah, Oman, on 5 April 2010, the motor vessel (M/V) RISING SUN broadcasted a distress call. The RISING SUN reported pirate skiffs were attacking using gun fire and rocket propelled grenades (RPGs). An Arleigh Burke class destroyer, USS McFAUL (DDG 74) and Omani Warship, AL SHARQUIYAH (B11) responded.

In transit to aid RISING SUN, McFAUL advised the vessel to use high speed evasive maneuvering and fire hoses to thwart the pirate attacks. Meanwhile, the Omani warship approached the location of the attack several hours before McFAUL was able to arrive on scene. Despite having taken RPG damage, the RISING SUN was able to prevent the pirates from securing ladders onto the ship's deck. The pirate skiffs broke off their attack and returned to their Mother ship, a pirated dhow (native wooden cargo vessel used on the Arabian Sea) subsequently identified as the FAIZE OSAMANI.

While tracking the pirate dhow, the Omanis witnessed the suspected pirates throwing numerous weapons overboard. As the Omani warship approached the FAIZE OSAMANI, nine people spontaneously jumped off the dhow into the water. The AL SHARQUIYAH immediately rendered assistance to the nine Indian crewmembers who had decided to cast their fate to the sea rather than remain onboard the captured dhow with the suspected pirates. Upon arriving at the scene, McFAUL attempted to contact the FAIZE OSAMANI, knowing that the suspected pirates were still onboard. McFAUL then deployed her Visit Board Search and Seizure (VBSS) team to take custody of the pirates, and directed the suspected pirates to move to the forward end of the dhow and raise their hands in the air. Provided with cover from crew served machine guns, the boarding team secured the pilot house and quickly took control of the suspected pirates. The suspected pirates were thoroughly searched and placed in handcuffs. The boarding team collected evidence, including photographing documents and fingerprints.

The Indian crew was returned to FAIZE OSAMANI and allowed to continue to their destined port of call. McFAUL received direction from Combined Maritime Forces naval headquarters to take the suspected pirates on board and detain them until further state transfer could be arranged for trial and prosecution. The U.S. had arranged a bilateral agreement with Kenya to transfer pirates for prosecution, but Kenya refused to take additional pirates, claiming their legal system was over stressed. The suspected pirates remained on board McFAUL for 30 days before the headquarters directed the commanders to transfer custody of the prisoners to the Somali Transitional Federal Government (TFG) in Djibouti for prosecution. During these 30 days, McFAUL had limited mission tasking and flight deck operations because there was no brig or detention

facility onboard. Since pirates are usually captured in groups, the number of suspects can quickly overwhelm the capability of a ship to provide secure billeting, food, and health care. Sailors were required to perform security guard duties in addition to their normal everyday responsibilities while the suspected pirates remained onboard. McFAUL was unable to receive approved country diplomatic clearance to enter port for supplies or repairs.

Thus, despite significant multi-national counter piracy efforts, which have included U.S. agencies and military forces, merchant vessels continue to be pirated regularly. Many of the pirates captured by naval forces are not being prosecuted. Instead, because legal protocols are lacking, they are returned to shore where they are free to resume their illegal activity. This pirate incident described is a symptom of a growing international problem in the waters off HOA, which has become a multi-million dollar venture annually for modern day pirates as vessel ownership groups continue to pay ransoms. If Somali piracy remains significantly unchallenged, merchant mariners might avoid transiting the sea lanes of the Indian Ocean and Gulf of Aden and the entire world economy may be affected as a result of increased transit costs passed to the consumer. Seizure of cargo ships and ransom demands directly affect global trade. Piracy operations directly threaten U.S. interests and citizens, as displayed during a recent kidnap for ransom action that led to the deaths of four Americans.[1]

Most observers claim that piracy off the coast of Somalia exists largely because Somalia is a failed state, with little to no rule of law or domestic law enforcement capability. The people of Somalia are living in a dire economic situation. A lack of

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[1] Somali pirates killed four Americans after their sailboat QUEST was hijacked off the coast of Oman in the Arabian Sea in February 2011. *Norfolk Virginian Pilot* (August 23, 2011).

employment opportunities, a shortage of arable land, continuing drought, and increasing competition from other nations fishing off the coast, have all affected the standard of living.

The conventional wisdom is that the solution lies ashore; meaning the establishment of good governance and economic development in Somalia, but the international community has displayed no interest to engage in nation building. To build a good government and to begin economic development in Somalia would require law enforcement actions, which would pose difficult problems and challenges to American and coalition military forces, especially when the use of force might be inappropriate or simply may not work. For example, the United Nations expanded its forces to nation building in Somalia, but eventually failed due to the violence of the tribal warlords. The United Nations (UN) supported Transitional Federal Government (TFG) continues its fight to hold the Somali capital in Mogadishu and attempts to resurrect some form of governance. The U.S. and the international community must adopt a more aggressive approach to suppress Somali piracy. The author will exam legal and historical responses to piracy and offer alternative solutions to nation building.

CHAPTER 1:
DEFINING THE SOMALI PIRACY THREAT

Throughout history, pirates have represented a threat to commerce and maritime security. For more than 2,000 years, piracy has existed wherever there is maritime commerce and a lack of security, ranging from a mere nuisance to destabilizing threats.[2] The first accounts of piracy along the shores of Asia Minor can be traced to a period prior to the Roman Empire. In the sixteenth century, English privateers pirated Spanish shipping in the Caribbean. In the seventeenth century, pirates were active in the Far East along the coast of China. In the eighteenth century, the Caribbean and Indian Ocean provided a safe haven for pirates. Into the nineteenth century, Islamic states that fell under the power of the Ottoman Empire controlled the Barbary Coast. Wealthy backers who sponsored these Barbary pirates received a handsome 10 percent of the loot.[3]

In every case, powerful navies patrolling the sea lanes eventually hunted down and slaughtered the pirates. History indicates that when pirates have interfered too much with trade, caused enough losses in ships, and inflicted a sufficient number of casualties, states used naval maritime power to stop them.[4] The Barbary pirates were defeated with the intervention of the United States Navy. Today, a substantial maritime piracy threat originates from the Somalia shores, but the strongest coalition navy in history has not met the challenge of piracy. Somali piracy is an increasing threat to maritime security and world commerce, and, as in the past, requires a solution.

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[2] James Kraska, *Contemporary Maritime Piracy: International Law, Strategy, and Dipomacy at Sea* (Santa Barbara, CA: Praeger, 2011), ix.

[3] John Payne, *Piracy Today: Fighting Villainy on The High Seas* (New York: Sheridan House Inc., 2010), 4.

[4] Ibid., 5.

Origins of Somalia Piracy

Somalia has all of the conditions necessary for piracy to thrive. Since the outbreak of civil war in Somalia in 1991, the country has been without central government control and it has little or no infrastructure. It has been labeled a failed state and is one of the poorest and most violent countries in the world. Somalia's 2,300 mile coast line is one of the longest compared to the other coastal states in Africa. There is no functioning government and pirate suspects cannot be tried in Somalia because the country currently lacks a functioning judicial system or prisons that meet international standards.[5]

High unemployment, a shortage of arable land, continuing drought, and increasing competition from industrial nations fishing in the waters of Somalia, have created conditions for criminal activity without fear of arrest or punishment. Somalia's geographic location allows access to the Gulf of Aden, Arabian Sea, and Indian Ocean, one of the world's busiest shipping lanes near key energy corridors.[6]

Piracy off Somalia owes its origin to the chaos resulting from the ouster of the Siad Barre regime when both the Somali Navy and the Police Coast Guard were effectively disbanded. While clans in the south of the country fought over the right to control Mogadishu and its basic revenue sources, the virtually autonomous regions of Somaliland and Puntland to the north endeavored to exert control over their territorial waters. Taking advantage of the lack of a central governing authority and maritime

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[5] Amber Ramsey, "Barriers to Prosecution: The Problem of Piracy," *Civilian Military Fusion Center* (September 2011): 5, https://www.cimicweb.org/Documents/CFC%20Anti-Piracy%20Thematic%20Papers/CFC_Anti-Piracy_Report_Prosecution_Aug_2011_FINAL.pdf (accessed 8 February 2012).

[6] U.S. House of Representatives, Committee on Armed Services, *Hearing: Combating Piracy on The High Seas*, Testimony by William E. Gortney, Vice Admiral, USN, 5 March, 2009, U.S. Government Printing Office, (Washington, 2010), 9.

security, foreign fishing vessels entered Somali territorial waters to fish the rich supply of lobsters, sharks, tuna, and mackerel. Somali fishermen complained bitterly to the United Nations and the international community about illegal foreign fishing. According to a UN agency estimate, around 700 foreign fishing vessels were known to be operating in Somali waters by 2005, many employing illegal and destructive fishing methods.[7] European companies also found it to be very convenient and profitable to dispose of their toxic wastes in Somali waters, which cost them as little as $2.50 a metric tonne (equals 1.102 U.S. short tons). By comparison disposal costs in Europe amounted to nearly $1000 a metric tonne.[8]

Confrontations soon escalated between Somali and foreign fishermen that eventually turned violent. Somali fishermen responded by arming themselves and began attacking the foreign fishing trawlers and seizing their catches to deter this illegal fishing. Italian, Korean, Ukrainian, Indian, Egyptian, and Yemeni fishing vessels were captured and released after payment of ransoms.[9] One analyst has termed this situation a "resource swap," with Somali pirates taking in $100 million annually in ransoms, while foreigners poached $300 million in fish.[10] One pirate group operating out of the port city of Eyl began calling themselves the Somali Coast Guard; another referred to themselves as Somali Marines.

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[7] Pervaiz Asghar, "The Scourge of Piracy," *Neptune Maritime Security*, (September 2011), http://maritimesecurity.asia/free-2/piracy-2/the-scourge-of-piracy (accessed 4 November 2011).

[8] Ibid.

[9] Payne, 16.

[10] Peter Lehr, *Violence at Sea Piracy in The Age of Global Terrorism* (New York: Routledge, 2007), 13.

Many of the pirate factions have tried to put forth the notion that they were and

are protecting their communities from exploitation.[11] Freelance journalist, Abdulkarim

Jimale conducted an interview with a pirate nicknamed Saaid in April 2011. When he

asked Saaid how he became a pirate, he replied,

> I was a fisherman in Garacad, a coastal village in Somalia's Mudug region, before
> I turned into a coast guard. We decided to counter illegal fishing along our
> coastlines ourselves, and to protect our resources from foreign looters who
> destroyed our fishing equipment. The dumping of toxic waste was affecting the
> fish and villagers along the coast.[12]

Piracy, and its promise of instant wealth at minimal personal risk, became a popular

choice for many. Young men soon flocked to the coastal pirate lairs. Just one successful

hijacking with a $1 million dollar ransom payment could earn a pirate about $10,000

dollars, much more than the estimated averaged annual income of $650 dollars.[13] This

business model has also turned out to be profitable for the wider Somali society. The

inflow of ransom money has transformed previous destitute communities into

boomtowns.[14] Anja Shortland's Chatham House report analyzes local market data and

satellite images, which show pirates making a significant contribution to economic

development in Puntland provincial capitals of Garowe and Boosaaso, but coastal

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[11] Rubrick Biegon, "Somali Piracy and the International Response," *Foreign Policy in Focus*, (January 2009), http://www.fpif.org/fpiftxt/5827 (accessed 6 November 2011).

[12] Abdulkarim Jamali, "An Interview With a Pirate," *Somali Trade and Piracy*, (April 2011), http://somalialearn.wordpress.com (accessed 14 September 2011).

[13] International Expert Group on Piracy off the Somali Coast, "Piracy Off the Somali Coast: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia, Ambassador Ahmedou Ould- Abdallah," United Nations Organization, (November 2008), http://www.imcsnet.org/imcs/docs/somalia_piracy_intl_experts_report_consolidated.pdf (accessed 10 October 2011).

[14]Ransoms brought in more than $30 million in 2008. See Associated Press, "Somali Pirates Turn Villages into Boomtowns," *Associated Press*, (November 2008), http://www.msnbc.com/id/27806965 (accessed 10 October 2011).

villages have gained little from hosting pirates.[15] Pirates have built modern houses, drive

new cars, and have provided generators, which bring electricity to areas that have been in

the dark for more than 20 years. Businesses have sprung up within these communities to

cater to the pirates' every need, from food for their hostages, to the narcotic khat, which

the pirates consume in great quantities, to aid in sea sickness during their long

deployments at sea.[16]

Today, there are an estimated 50 known pirate bands, comprised of 2,000 to 3,000

pirates, operating from eight known well-equipped and well-armed pirate havens along

the coast of Somalia.[17] Figure 1 depicts pirate havens, located at Boosaaso, Caluula, Eyl,

Garacad, Hoboyo, Haradheere, Marka, and Kismayo, all coastal towns in Puntland and

southern Somalia. Pirates depart from these bases typically using a large dhow (mother

ship) and two small fiberglass molded skiffs powered by one or more outboard motors,

which are able to reach speeds up to 30 knots (depicted in figure 2). Each small skiff

usually carries five pirates armed with rocket propelled grenades (RPGs) and

sophisticated GPS and Automatic Information Systems (AIS). When the pirates receive a

signal of a merchant ship transiting nearby, they launch an attack from the two skiffs.

They chase the merchant vessel, firing weapons at the bridge or controlling

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[15] Anja Shortland, "Treasure Mapped: Using Satellite Imagery to Track the Developmental Effects of Somali Piracy, *Chatham House*, (January 2012), http://www.chathamhouse.org/sites/default/files/public/Research/Africa/0112pp_shortland.pdf (accessed 18 January 2012).

[16] Ransoms brought in more than $30 million in 2008. See Associated Press, "Somali Pirates Turn Villages into Boomtowns," *Associated Press*, (November 2008), http://www.msnbc.com/id/27806965 (accessed 10 October 2011).

[17] Gordon Van Hook, "Pirates on the High Seas," lecture, *World Affairs Council of Western Michigan*, (March 21, 2011), http://www.worldmi.org/great-decisions-2011.html (accessed 10 October 2011).
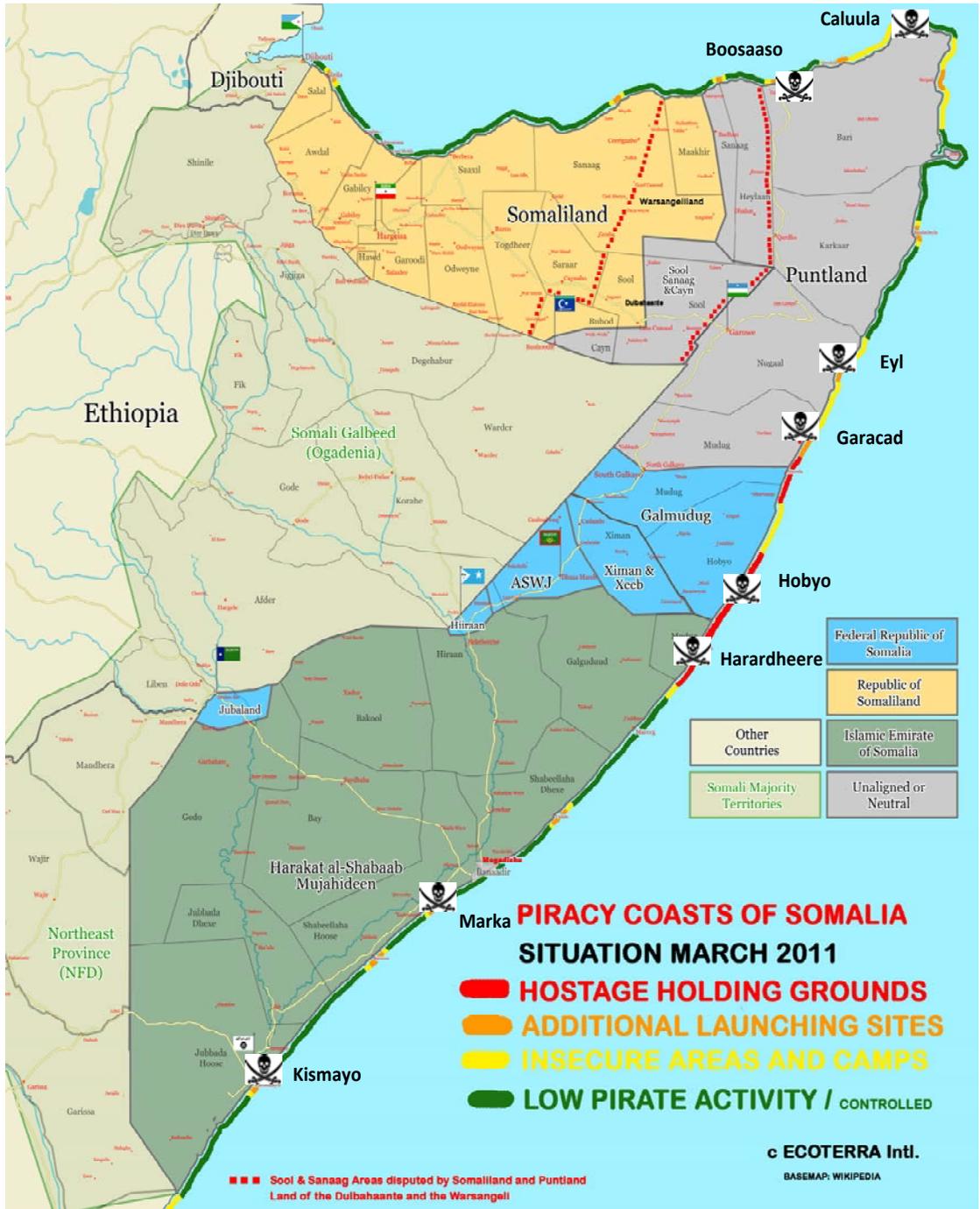
Figure 1. Pirate Havens Along the Somalia Coast
Source: Modified from original at Ecoterra International, http://australia.to/Somalia_Piracy.gif
(accessed 4 January 2012).

station. Some vessels allow the pirates to board, while others take evasive actions and speed off. Those vessels that are seized are forced to change course and sail towards the Somali coast pirate anchorages off of either Garacad, Hobyo or Haradheere. The pirates typically treat the vessel's crew humanely, while ransom negotiations begin with the ship owner. Usually, the ransom is air dropped and once the pirates retrieve the money, they release the vessel and crew.

Figure 2. Typical Pirate Ship and Attack Skiffs

The Spreading Threat

Piracy along the coast of Somalia has created a maritime problem that has showed little decline in reported events since its resurgence in 2006. For the past six or seven years, piracy stemming from Somalia is increasingly assuming threatening proportions. International attention was drawn towards Somalia piracy after the hijacking of a Ukrainian freighter MV FAINA, transporting 33 T-72 tanks and associated equipment to Kenya, on 25 September 2008. This was followed just over a month later by the hijacking of the MV SIRIUS STAR, the largest ship ever captured by pirates. The SIRIUS STAR was a Saudi owned supertanker carrying two billion barrels of crude oil

worth an estimated $100 million.[18] Both MV FAINA and MV SIRIUS STAR were

released once ransoms were received in the amount of $3.2 and $3.0 million

respectively.[19] In 2009, when an International Recommended Transit Corridor (IRTC)

was promulgated in the Gulf of Aden, and backed up by a naval escort force, the pirates

shifted the bulk of their activities to the more open Indian Ocean. When merchant

shipping was directed to stay away from the Somali coast, the pirates likewise kept

increasing their range through the employment of hijacked vessels as motherships to

increase the targeting range of their pirate skiffs. Pirate attacks began along the Somali

coast in 2007, and then moved to target ships in the Gulf of Aden in 2008, and since have

continued to expand east into the Indian Ocean, south toward Madagascar, and north

toward Oman. Figure 3 illustrates the large water space in which pirates operate and how

they have continued to expand away from the Somalia coast between 2007 to 2010.

Since then, it has been more of a cat-and-mouse game between the pirates and the

international maritime community. Somali pirates have vastly expanded the range of

their attacks on merchant vessels to encompass much of the western Indian Ocean. But

even more alarming, the pirates have dramatically increased the quantity and viciousness

of their attacks.

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[18] MV FAINA was pirated 25 September 2008, and released 6 February 2009. MV SIRIUS STAR was pirated 15 November 2008, and released 9 January 2009. More detailed reports of each incident can be found in Payne, *Piracy Today*, 146 and 171.

[19] Abdi Sheikh, "Ransom paid as Somali pirates free supertanker," *The Independent World*, (January 2009), http://www.independent.co.uk/news/world/africa/ransom-paid-as-somali-pirates-free-supertanker-1270796.html (accessed 16 November 2011).
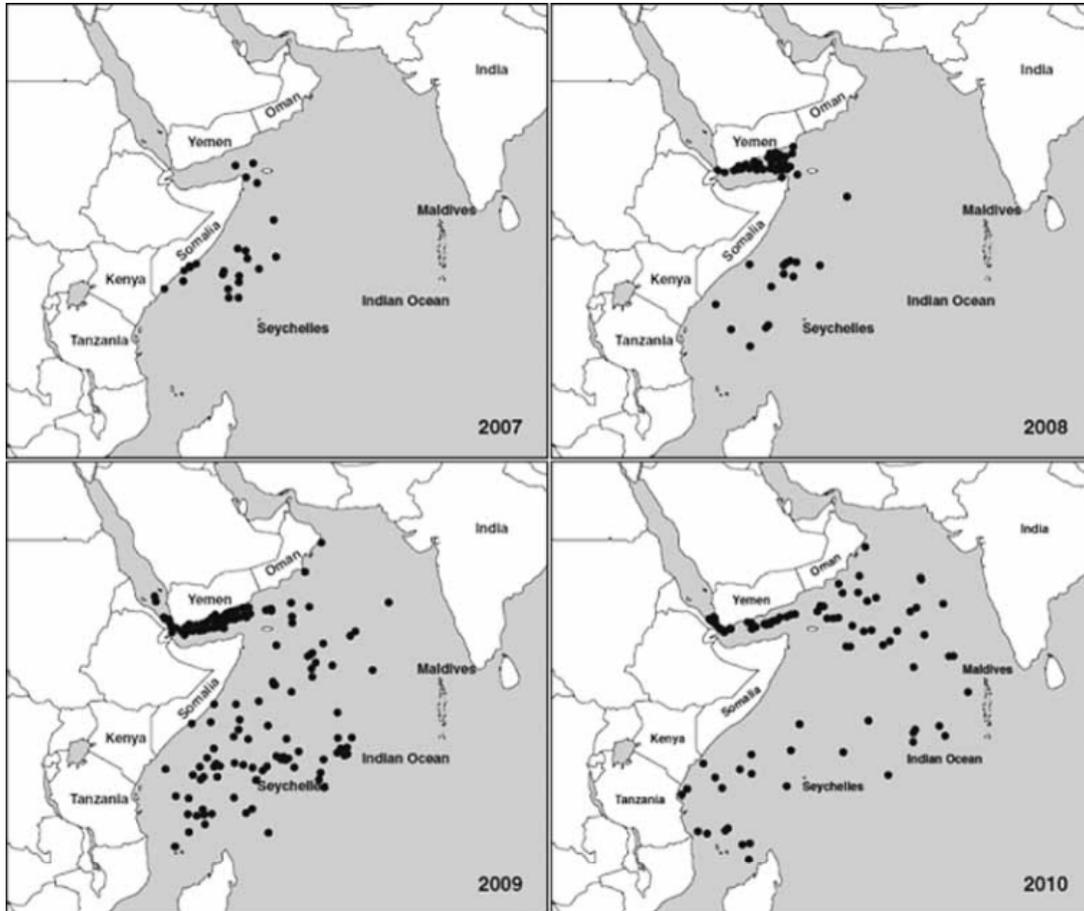
Figure 3. Successful and Attempted Pirate Attacks off the Coast of Somalia (January 2007 to June 2010)
Source: International Chamber of Commerce, Commercial Crime Services, IMB Piracy Map, 2007–2011, at http://www.icc-ccs.org/home/piracy-reporting-centre/imb-live-piracy-map-2010 (1 March 2011).

    The International Maritime Bureau (IMB) is the main tracking source for piracy attacks.[20] The IMB publishes a weekly summary of pirate attacks worldwide and their official statistics from their 2010 and 2011 annual reports indicate the increased Somali pirate threat. Pirate incidents in the region have shown an increase from 20 reported in 2006, to 219 reported in 2010. Likewise, more hostages were seized at sea in 2010 than

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[20] IMB was formed in 1992 as a subsidiary of Commercial Crime Services, a division of the International Chamber of Commerce. The IMB is headquartered in Essex, England, and operates the Piracy Reporting Center from Kuala Lumpur, Malaysia, from John Payne, *Piracy Today: Fighting Villainy on The High Seas*, (New York: Sheridan House Inc., 2010), 21.

in any year since records began. Compared to 188 hostages reportedly seized by pirates

around the world in 2006, there were 1181 hostages reportedly seized in 2010. Somali

pirates captured 1016 of these seafarers in 2010.[21] Hijackings off the coast of Somalia

accounted for 92 percent of all ship seizures in 2010 with 49 vessels hijacked. The

number of Somali piracy incidents slightly increased to 237 in 2011, but hijacked vessels

were reduced almost in half to 28 with 470 hostages.[22] The lower numbers in 2011

reflect the influence of international naval patrols, new best management practices used

by merchant vessels, and employment of privately contracted armed security personnel.

Despite significant multi-national counter piracy efforts, Somalia pirate incidents

continue to increase each year. As of 19 January 2012, Somali pirates were holding nine

vessels and 151 hostages, and demanding ransoms of millions of dollars for their

release.[23] Figure 4 shows the increased number of piracy incidents over five years and

the increasing distance from the Somali coastline.

Merchant mariners, who are unfortunate enough to become pirated, are held for

longer periods of detention while their captors wait for ransoms. MV ICEBURG I,

owned by a Dubai-based company, was released in October 2011 after being held by

Somali pirates for almost 19 months.[24] Another group of pirates then recaptured it on the

same day, and as of January 2012, the 27 crew members had been held for ransom for a

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[21] ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships Annual Report for 2010* (United Kingdom: Maritime House, 2011), 19.

[22] ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships Annual Report for 2011* (United Kingdom: Maritime House, 2012), 20.

[23] ICC International Maritime Bureau, Piracy News and Figures, http://www.icc-ccs.org/piracy-reporting-centre/piracynewsafigures (accessed 19 January, 2012).

[24] Edward Lundquist, "Changing Tactics, As Somali Pirates Adapt to Efforts to Stop Them, Shippers Devise Guidelines and Defenses of Their Own," *Seapower Magazine* (December, 2011), (accessed via Early Bird, 6 December 11).

total of 673 days. USS McFAUL intercepted MV ICEBURG I after the vessel departed

Garacad anchorage in May 2010.[25] The vessel's master denied a request for boarding to

check on the health and safety of his crew saying there were 50 armed pirates onboard.

The vessel was either being used to resupply pirate action groups operating in the Indian

Ocean or being used as a mother ship to attack other merchants. USS McFAUL

shadowed the vessel for 36 hours before it turned back toward the Somali coast, thereby

disrupting the pirates intended actions.
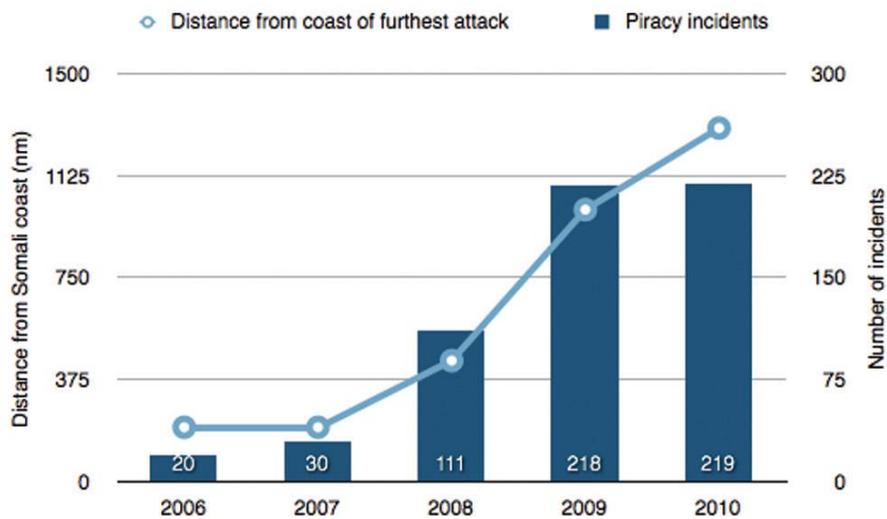
Figure 4. Expanded Range and Frequency of Pirate Attacks (2006-2010)
Source: Rick Nelson and Scott Goossens, "Counter-Piracy in the Arabian Sea: Challenges and Opportunities for GCC Action," *Center for Strategic and International Studies Middle East Program*, (May 2011), 2.

Somali pirates have become more sophisticated, adjusting their tactics, and

taking fatal aggressive action. When naval forces started targeting the pirates in the

region, they began hardening their stance towards the hostages. In April 2009, during the

MAERSK ALABAMA incident, Captain Richard Phillip was rescued after a ninety-six

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[25] CNN World, "U.S. Detroyer Shadows Ship Under Pirate Control," *CNN World*, (May, 2010), http://articles.cnn.com/2010-05-24/world/somalia.pirates_1_somali-coast-pirates-iceberg?_s=PM:WORLD (accessed 8 December 11).

hour stand-off that ended with Navy SEAL snipers killing three pirates.[26] The Somali pirate community appeared shaken by the forceful U.S. response and a self-proclaimed Eyl-based pirate stated, "From now on, if we capture foreign ships and their respective countries try and attack us, we will kill them."[27] Out of the 3,500 seafarers taken hostage during the past 4 years, 62 of them have died by deliberate murder, drowning, malnutrition and disease, heart failure, and even suicide.[28] Piracy operations are more directly threatening U.S. interests and citizens. The kidnaping for ransom action that led to the deaths of four Americans onboard the sailboat QUEST has followed the 2009 MAERSK ALABAMA incident.[29]

Economic Impact of Somali Piracy

Seaborne trade has doubled every decade since the end of World War II; since 1990, shipbuilding tonnage has doubled. Approximately 80 percent of international world trade currently travels by sea, representing around 93,000 merchant vessels, 1.25 million seafarers, and almost six billion tons of cargo.[30] Recognizing that uninterrupted maritime commerce underpins global economic security, the dramatic increase in ship hijackings and armed robbery in the Gulf of Aden and Indian Ocean pose a serious security concern for all nations with maritime assets operating in the region. Annually

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[26] For more info on this incident, see Richard Phillips, *A Captains Duty: Somali Pirates, Navy Seals, and Dangerous Days at Sea* (New York: Hyperion, 2010).

[27] Martin Murphy, *Somalia: The New Barbary?* (New York: Columbia University Press, 2011), 106.

[28] ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships Annual Report for 2010* (United Kingdom: Maritime House, 2011), 19.

[29] Somali pirates killed four Americans after their sailboat QUEST was hijacked off the coast of Oman in the Arabian Sea in February 2011. *Norfolk Virginia Pilot* (August 23, 2011).

[30] David Rosenberg, "The Political Economy of Piracy in the South China Sea," in Elleman, Forbes, and Rosenberg (eds), *Piracy and Maritime Crime*, Naval War College Newport Papers, (Newport: Naval War College Press, 2010), 80.

nearly 33,000 ships pass through the Gulf of Aden and Indian Ocean, a natural chokepoint that provides access to the Red Sea and Suez Canal.[31] These vessels are carrying valuable cargo, such as oil from the Middle East or consumer goods produced in Asia, en route to Europe and the Americas. The ships, along with their crews and valuable cargo, are being targeted and attacked by Somali pirates and the success of the pirates is disrupting and dramatically effecting global trade.

The success of maritime trade depends on freedom of movement in international waterways, which piracy interferes with to the extent that it is more than just a nuisance or operating cost. In 2011, Somali piracy accounted for 54 percent of all global attacks.[32] High-seas piracy poses an increasing threat to maritime security and is costing the international economy between $7 to $12 billion U.S. dollars per year.[33] Besides the tremendous human costs, the economic costs include increasing ransom payments and insurance premiums, avoiding the area by rerouting vessels around the Cape of Good Hope, or accepting risk by enhancing vessel security, and hiring private security guards.

The seizing of cargo ships and ransom demands have harmful economic effects on companies and countries. Ransom payments have registered a staggering 36-fold increase from 2006, when ransoms averaged $150,000. Ransoms now average $5.4

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[31] Government Accountability Office, *Maritime Security Actions Needed to Assess and Update Plan and Enhance Collaboration Among Partners Involved in Countering Piracy off the Horn of Africa, September 2010* (Washington, DC: Government Printing Office, 2010), 6.

[32] The Maritime Executive, "Piracy Report: Worldwide Sea Piracy Down, Somalia Remains Biggest Threat," *The Maritme Executive*, (January 20, 2012), http://www.maritime-executive.com/article/piracy-report-worldwide-sea-piracy-down-somalia-remains-biggest-threat (access 21 January, 2012).

[33] Anna Bowden, "The Economic Cost of Maritime Piracy," *One Earth Future Working Paper*, (December 2010), http://oneearthfuture.org/images/imagefiles/Cost%20of%20Piracy%20Final%20Report.pdf (accessed 8 November, 2011).

million per ship.[34] In November 2010, the highest ransom on record, $9.5 million, was paid to Somali pirates to release the SAMHO DREAM, a South Korean oil tanker.[35] Piracy profits have grown significantly, bringing in over $200 million to Somalia annually, according to Roger Middleton's research.[36] Pirates have increased ransom demands year after year as well as the duration seafarers are held hostage. Ships were held for an average of 106 days between April and June 2010, up from 55 days in 2009, and the last four ships released in November 2010 were held for an average of 150 days.[37]

In reaction to the growing threat of ransom costs, the maritime insurance industry has responded by increasing its shipping rates and premiums, especially in the Gulf of Aden and western Indian Ocean, designated as a high-risk piracy zone. Shipping insurance comes in four main types: war risk, kidnap and ransom, cargo, and hull insurance. Not surprisingly, war risk and kidnap ransom are the largest insurance premiums related to piracy. The global cost is now estimated at $3.2 billion per year, assuming that at least 70 percent of ships transiting the Gulf of Aden purchase the insurance.[38]

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[34] David Rosenberg, "Somali Pirates Growing More Daring," *Qatar Gulf Times* (September, 2011), (accessed via Early Bird, 2 September 11).

[35] Anna Bowden, "The Economic Cost of Maritime Piracy," *One Earth Future Working Paper*, (December 2010), http://oneearthfuture.org/images/imagefiles/Cost%20of%20Piracy%20Final%20Report.pdf (accessed 8 November, 2011).

[36] Roger Middleton, *Trends in Piracy: A Global Problem with Somalia at the Core* (UK: Chatham House, 2010), 3.

[37] National Public Radio, "Pirate Hostages Held Twice as Long as in 2009." *NPR*, (November 18, 2010), http://www.npr.org/templates/store/story.php?storyid=129752448&ft=1&f= (accessed 5 August, 2011).

[38] U.S. Department of Transportation, "Economic Impact of Piracy in the Gulf of Aden on Global Trade," Maritime Admistration,

Some commercial shipping companies have chosen to avoid the risk of transiting through the Gulf of Aden and have diverted their vessels around the Cape of Good Hope. Routing a ship from Saudi Arabia to the United States around the Cape of Good Hope adds approximately 2,700 miles to the voyage. This longer distance increases the vessel's annual operations costs ($3.5 million in fuel) and reduces delivery capacity from six to five round-trip voyages, a reduction of about 26 percent yearly delivery capacity.[39] Rerouting from Europe to the Far East is an even greater distance and will add almost 15 to 20 days for a cargo ship.[40] Rerouting may be a viable option for lower value cargoes, such as bulk commodities, but for high value consumer goods or items needed for just-in-time manufacturing, the added delay may be unacceptable to the shipper.

Ship owners may also attempt to protect their ships, cargoes, and crews from pirate attacks by preparing their ships with security equipment and/or privately contracted security personnel. The average total cost of deterrence equipment and security personnel to the shipping industry is estimated around $134,000 per transit.[41] Hiring a

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http://www.marad.dot.gov/documents/HOA_Economic%20Impact%20of%20Piracy.pdf (accessed 16 November, 2011).

[39] U.S. Department of Transportation, "Economic Impact of Piracy in the Gulf of Aden on Global Trade," Maritime Admistration, http://www.marad.dot.gov/documents/HOA_Economic%20Impact%20of%20Piracy.pdf (accessed 16 November, 2011).

[40] Ben Unterreiner, "The Cost of Piracy in the Gulf of Aden," Montana State Universtiy, Department of Economics 2009, http://docs.docshare.com/c-202143uqbDCL5Cdx5q-61781.pdf (accessed 16 November 2011).

[41] Anna Bowden, "The Economic Cost of Maritime Piracy," *One Earth Future Working Paper*, (December 2010), http://oneearthfuture.org/images/imagefiles/Cost%20of%20Piracy%20Final%20Report.pdf (accessed 8 November, 2011).

privately contracted security personnel can cost approximately $60,000 per transit through the Gulf of Aden.[42]

Somali piracy places secondary costs related to regional countries surrounding piracy zones. These include an increased cost to regional trade routes threatened by the pirates, food price inflation, and reduced foreign revenue. Additional burdens on governments and the maritime industry include the cost of newly established piracy-deterrence organizations, the operating costs of naval forces from over 48 nations contributing to counter piracy efforts, and the cost of piracy prosecutions. The total costs of maritime piracy during 2010 are reflected in Table 1. These costs are inevitably passed along to the consumer.

Table 1. Total Costs of Maritime Piracy in 2010

Cost Factor	Cost
Ransoms: (excess costs)	$148 million
Insurance Premiums	$460 million to $3.2 billion
Re-Routing Ships	$2.4 to 3 billion
Security Equipment	$363 million to $2.5 billion
Naval Forces	$2 billion
Prosecutions	$31 million
Anit-Piracy Organizations	19.5 million
Cost to Regional Economies	$1.25 billion
TOTAL ESTIMATED COST	**$7 to $12 billion per year**

Source: "The Economic Cost of Piracy," *Oceans Beyond Piracy*, at http://oceansbeyondpiracy.org/sites/default/files/documents_old/The_Economic_Cost_of_Piracy_Summary.pdf (accessed 8 November, 2011).

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[42] U.S. Department of Transportation, "Economic Impact of Piracy in the Gulf of Aden on Global Trade," Maritime Admistration, http://www.marad.dot.gov/documents/HOA_Economic%20Impact%20of%20Piracy.pdf (accessed 16 November, 2011).

If Somali piracy remains unchallenged, and maritime security maintains a tenuous status quo, the piracy threat will force merchant mariners to avoid transiting the sea lanes of the Indian Ocean and Gulf of Aden and the entire world economy will be affected by added costs passed to consumers.

CHAPTER 2:
INTERNATIONAL RESPONSE AND LEGAL CHALLENGES

Piracy Defined

The legal definitions for countering piracy emerged from customary international law, the 1958 Convention on the High Seas, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Our founding fathers drafted piracy laws in the U.S. Constitution. Article I, Section 8 explicitly gives Congress the authority, "To define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations," as well as "grant Letters of Marque and Reprisal."[1] Piracy under the law of nations as accepted by the U.S. and the vast majority of the international community, and defined in Article 101 of UNCLOS as any of the following acts:

> a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft, and directed either:
>
>> i) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
>>
>> ii) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
>
> b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of the facts making it a pirate ship or aircraft;
>
> c) Any act of inciting or intentionally facilitating an act described in subparagraph (a) or (b).[2]

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[1] U.S. Constitution, Art. 1, Sec. 8. It is interesting to note that Letters of Marque have not been issued since the War of 1812 in U.S. House of Representatives, Committee on Transportation and Infrastructure, *Hearing: Assuring the Freedom of Americans on the High Seas: The United States' Response to Piracy,* by Staff, Subcommittee on Coast Guard and Maritime Transportation (Washington, 2011).

[2] U.N. Convention on the Law of the Sea, Montego Bay (10 December 1982), 436, at http://treaties.un.org/doc/Publication/UNTS/Volume%201833/volume-1833-A-31363-English.pdf (accessed 23 January 2012).

From this definition, in order for an event to be classified as an act of piracy, it must consist of the following five elements: an illegal act of violence or detention, which occurs on the high seas, committed for private ends, by the crew of a private ship or aircraft, and against another ship or aircraft. If any of these elements are missing, then the incident cannot properly be described as piracy. Therefore, it is crucial that international naval forces know in what area of the sea a piracy incident takes place, as piracy can only be committed on the high seas or outside of a state's territorial waters. Inside territorial waters, such crimes constitute armed robbery at sea and are the responsibility of the coastal state. This poses a problem for Somalia, since it has no legal jurisdiction for its territorial waters. Additionally, pirates are exploiting the seams upholding international law while simultaneously enforcing the sovereignty of nation states. Article 105 of UNCLOS precludes any external state from pursuing or seizing pirates in another state's territorial waters without the expressed permission of that state.[3]

As the United Nations Convention on the Law of the Sea definition of piracy is derived nearly verbatim from the 1958 Convention on the High Seas, it generally is considered to reflect customary international law and is binding on all nations.[4] Customary international law means that any nation may assert jurisdiction over piracy, including the state of registry of the attacked vessel, the nationality of any of the victims on board the vessel, and in some cases coastal and port states. UNCLOS also contains provisions relating specifically to maritime security. Articles 100 through 107 address

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[3] U.N. Convention on the Law of the Sea, Montego Bay (10 December 1982), 437, at http://treaties.un.org/doc/Publication/UNTS/Volume%201833/volume-1833-A-31363-English.pdf (accessed 23 January 2012).

[4] James Kraska, *Contemporary Maritime Piracy, International Law, Strategy and Diplomacy at Sea* (Santa Barbara, California: Praeger, 2011), 129.

piracy, and Article 111 contains provisions for hot pursuit from the high seas into a

coastal state's territorial sea.[5] Article 110 incorporates the customary norm in

international law that warships may approach commercial vessels in order to determine

their nationality.[6] The convention also permits all nations' warships on the high seas the

right of visit or boarding, even without flag state consent, for disrupting certain universal

crimes, such as human slave trafficking and maritime piracy. Approach and visit

provides authority for warships at sea to make merchant ship inquiries in order to

ascertain certain basic information, and to determine whether the vessel is involved in

piracy.[7] If a U.S. naval vessel captures pirates, U.S. Law Title 18, United States Code

section 1651, can hold them accountable. It states:

> Whoever, on the high seas, commits the crime of piracy as defined by the law of
> nations, and is afterwards brought into or found in the United States, shall be
> imprisoned for life.[8]

The rapid escalation of armed attacks off the Horn of Africa, in the Gulf of Aden,

and the Indian Ocean, prompted an unprecedented counter piracy response from the U.S.

Government, the United Nations (UN), the European Union (EU), the North Atlantic

Treaty Organization (NATO), the Combined Maritime Force (CMF), other naval forces,

and the international maritime industry. Although coalition patrols in the Gulf of Aden,

specifically within the International Recognized Transit Corridor (IRTC), have prevented

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[5] U.N. Convention on the Law of the Sea, 436-439.

[6] U.N. Convention on the Law of the Sea, 438.

[7] Louise Doswald-Beck, ed., *San Remo Manual on the Law Applicable to Armed Conflict at Sea*, (London: Press Syndicate of the University of Cambridge, 1995), 31–32.

[8] Based on the Crimes and Criminal Procedures Act of June 25, 1948, 62 Stat. 774 (1948) at http://uscode.house.gov/download/pls/18C81.txt (accessed 23 January 2012).

numerous piracy attempts and ensured mariners are following best practices, the threat continues to grow.

The 2007 preamble of *A Cooperative Strategy of 21ˢᵗ Century Seapower* (CS-21) vows that the U.S. will "join with other like-minded nations to protect and sustain the global, interconnected system through which we prosper."[9] In December 2008, the President approved the National Security Council's strategy document, *Countering Piracy off the Horn of Africa: Partnership and Action Plan*. The strategy recognized that steps could be taken to deter, counter, and reduce the risk of attacks by Somali pirates.[10]

The United Nations also began to examine the dangerous conditions off Somalia's coast in December 2008, when the Security Council unanimously passed UN Security Council Resolutions (UNSCR) 1846 and 1851 that authorized multinational naval forces to enter both the territorial waters of Somalia and the land territory of that state when necessary to destroy pirate strongholds.[11] This action was unprecedented, indicating the UN's commitment to deal with piracy as a maritime threat to international peace and security. International naval efforts have reduced the amount of successful pirate attempts within their patrol areas, but pirates continue to exploit the areas where coalition naval forces are not present, especially in the vast Indian Ocean. In the last quarter of 2011, pre-emptive strikes by naval forces disrupted at least 20 groups of pirates before

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[9] U.S. Department of the Navy, *A Cooperative Strategy for 21ₛₜ Century Seapower* (Washington DC: Government Printing Office, October 2007) http://www.navy.mil/maritime/Maritimestrategy.pdf (accessed 11November 2011).

[10] National Security Council, *Countering Piracy off the Horn of Africa: Partnership and Action Plan* (Washington DC: The White House, December 2008).

[11] See Appendix 1 for summary of UNSCR 1846 and 1851 found in Kraska, 226-229.

they could threaten commercial fleets.[12] International counter piracy forces continue to deter and disrupt piracy with some notable success, but have not defeated pirates or changed the circumstances under which piracy has flourished internal to Somalia's coastline.

International Response

On 8 December 2008, the EU established its first ever multinational maritime organization, named EUNAVFOR Atalanta or Combined Task Force (CTF) 465. One of its primary tasks is to safeguard the World Food Program (WFP) shipping transiting the Gulf of Aden and Indian Ocean and it has 100 percent success rate escorting WFP vessels, delivering over 674,000 tons of food for Somali people.[13] Additional tasks include the protection of other vulnerable shipping, including ships hired by African Union Mission in Somalia (AMISOM) and ships transiting the IRTC, as well as contributing to the deterrence, prevention, and repression of piracy off the Somalia coast. More than 16 vessels and aircraft participate in Operation Atalanta, but only eight EU member states (Italy, Germany, France, Spain, Belgium, Luxemburg, Greece, and the Netherlands) make a permanent operational contribution. Operations are monitored and synchronized from the Operational Headquarters at Northwood, United Kingdom. The current mandate of operations is expected to continue through December 2012.

EUNAVFOR additionally established an online center for transiting ships through the Gulf of Aden known as the Maritime Security Center – Horn of Africa (MSC-

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[12] ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships Annual Report for 2011* (United Kingdom: Maritime House, 2012), 20.

[13] For additional information on EUNAVFOR Atalanta see http://www.eunavfor.eu/about-us/mission (accessed 10 September 2011).

HOA).[14] The center records all movements through the Gulf of Aden, receives and

issues updated threat information, and coordinates all merchant vessel's request for

assistance through their unclassified server known as Mercury chat. Merchants that

follow MSC-HOA's advice are at considerably less risk of being attacked. MSC-HOA

has over 6,000 registered users and has seen over 300,000 visits by 185 countries since its

established at the end of 2008.[15] The United Kingdom Maritime Trade Operations

(UKMTO) in Dubai and US Navy's Maritime Liaison Office (MARLO) in Bahrain also

provide similar services.

At the request of UN Secretary-General Ban-Ki Moon, NATO deployed Standing

NATO Maritime Group 1 (SNMG-1) to conduct counter piracy operations off HOA in

late 2008. NATO escorts protected WFP shipments transiting through the Gulf of Aden

destined for Mogadishu, Somalia, under Operation Allied Provider.[16] This task was

transferred to the European Union in December 2008, who then assumed the mission

based on long-term protection for WFP ships carrying life-saving assistance. After a

three month absence, NATO initiated Operation Allied Protector, a new counter piracy

operation, from March to August 2009. NATO renamed this operation to what it is

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[14] For additional info on MSC-HOA see http://www.mschoa.org/Pages/default.aspx (accessed 10 September 2011).

[15] Kees Homan and Susanne Kamerling, "Operational Challenges to Counterpiracy Operations off the Coast of Somalia," in *The International Response to Somali Piracy: Challenges and Opportunities*, (Boston: Martinus Nijhoff Publishers, 2010), 75.

[16] Allied Provider was a temporary operation, requested by the Secretary-General of the United Nations, Ban Ki-moon, on 25 September 2008. NATO provided this counter-piracy capacity in support of UNSC Resolutions 1814, 1816 and 1838 (Appendix 1), and in coordination with other international actors, including the European Union. The Operation was responsible for naval escorts to World Food Program (WFP) vessels and, more generally, patrolled the waters around Somalia. Alliance presence also helped to deter acts of piracy that continue to threaten the region. http://www.aco.nato.int/page13984631.aspx (accessed 22 February, 2012).

known today, Operation Ocean Shield (CTF 508).[17] As in previous missions, the

primary responsibility of CTF 508 is to deter, defend, and disrupt pirate activities off the

Horn of Africa and in the Gulf of Aden. Allied Maritime Component Command in

Northwood, United Kingdom, manages the daily operations. The operation also

comprises the element of knowledge sharing and provides interested states in the piracy-

prone area off HOA and the Gulf of Aden with assistance in training and developing their

own capacity to combat pirates. Host nation maritime security forces conduct training

with international naval force crews during port visits. Forces currently participating

with operation Ocean Shield include the United States, Canada, United Kingdom, Spain,

Portugal, Poland, Norway, Belgium, Denmark, Germany, and the Netherlands.

The Combined Maritime Forces (CMF) is a multinational coalition naval task

force, with its operational headquarters in Bahrain, and is actively involved in the

repression of Somali piracy. Established in 2001, the coalition consists of 23 nations

headed by the U.S.; it conducts counter terrorism, narcotics, and smuggling operations.[18]

The primary mission of CMF is to counter violent extremists and terrorist networks and

work with regional and coalition partners to improve overall maritime security and

stability. The CMF patrols more than 2.5 million square miles of international waters in

the Gulf of Aden, Gulf of Oman, Arabian Sea, Red Sea, and the Indian Ocean with three

principal tasks forces, CTF 150, CTF 151, and CTF 152. The first two task forces are

involved in the fight against Somali piracy. Combined Task Force 150 is focused on at

sea deterrence of all destabilizing activities in the region, with an emphasis on drug

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[17] For additional information on NATO Ocean Shield see
http://www.shipping.nato.int/operations/OS/Pages/default.aspx (accessed 10 September 2011).

[18] For additional information on CMF see http://www.cusnc.navy.mil/cmf/cmf_command.html
(accessed 12 September 2011).

smuggling, weapons trafficking, as well as anti-terrorism operations as part of the global war on terrorism.[19] Because of the increased regional focus on counterpiracy, CTF 150 tasks (in January 2009) were redefined and extended. Ships in CTF 150 helped deter pirate attacks in the Gulf of Aden by tracking down suspicious vessels, capturing and disarming Somali pirates, destroying pirate skiffs, and handing over suspected pirates to prosecuting states.

In support of the second line of action contained in the NSC's *Countering Piracy off the Horn of Africa: Partnership and Action Plan*, which is to interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coast and flag states, CTF 151 was established.[20] The duty of CTF 151 is to patrol and monitor the defined maritime security areas in the Gulf of Aden, with focus on the IRTC, and the east coast of Somalia.[21] It has deployed a dozen ships to the region and received support from another 20 states in the process. Nations supporting CTF 150 and 151 include: the United States, France, Denmark, the Netherlands, United Kingdom, Greece, Italy, Pakistan, Canada, Australia, South Korea, Singapore, Spain, Turkey, and Yemen.

U.S. Navy ships assigned to CTF 151 deploy with highly trained Visit, Board, Search, and Seizure (VBSS) teams, as well as the Coast Guard's elite Law Enforcement Detachments (LEDETs). The role of the LEDET is to supplement and train VBSS teams in various maritime interdiction operation mission areas, including boarding policies and

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[19] For additional information on CTF 150 see http://www.cusnc.navy.mil/cmf/150/index.html (accessed 12 September 2011).

[20] National Security Council, *Countering Piracy off the Horn of Africa: Partnership and Action Plan* (Washington DC: The White House, December 2008), 10.

[21] For additonal information on CTF 151 see http://www.cusnc.navy.mil/cmf/151/index.html (accessed 12 September 2011).

procedures, evidence collection and reparation, tactical procedures, and maritime law.[22]

This combination of experience and expertise is well suited for the execution of the

counter piracy mission.

In addition to the U.S., NATO, and EU, there are many other nations contributing

to the international counter piracy efforts. Today, as many as 30 ships from 14 nations

navigate around HOA and near the Somali coast. These include ships from Russia, India,

Pakistan, Japan, Malaysia, Singapore, Saudi Arabia, Iran, South Korea, and China. The

participation of China and India is noteworthy, as both of their naval forces are known

more for littoral operations, than blue water operations. Their extended deployments

supporting the counter piracy effort have created new logistic challenges, including

navigation through the exclusive economic zone of coastal states, and conducting visit,

board, search and seizure operations in unfamiliar areas.[23] The main reason these ships

participate in the war on piracy is to protect their national commercial interests. These

nations monitor the operational theater and conduct national escort operations through the

IRTC with as many as 30-40 ships in a convoy, keeping the vital sea lanes open for

merchant traffic and the free flow of goods and products around the world.

Not only are national naval forces taking action, but also the maritime industry

has made numerous advances to harden their ships from pirate attacks.[24] The maritime

industry has accomplished this in recent years by using non-lethal measures such as

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[22] James Terry, "Eliminating High Seas Piracy Legal and Policy Considerations," *Joint Force Quarterly*, Issue 34, 3rd Quarter (2009), 119.

[23] Kees Homan and Susanne Kamerling, "Operational Challenges to Counterpiracy Operations off the Coast of Somalia," in *The International Response to Somali Piracy: Challenges and Opportunities* (Boston: Martinus Nijhoff Publishers, 2010), 79.

[24] In the NSC's *Countering Piracy off the Horn of Africa: Partnership and Action Plan*, the first line of action is to prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy. National Security Council, *Countering Piracy off the Horn of Africa: Partnership and Action Plan* (Washington DC: The White House, December 2008), 7.

netting, wire, electric fencing, long-range acoustical devices, and fire hoses to prevent

pirates from boarding in accordance with new best management practices.[25] Speed and

maneuver are the ship's best defense, especially when transiting the IRTC high risk areas.

There has yet to be a successful pirate attack for vessels transiting with speeds in excess

of 18 knots.[26] Figure 5 shows an oil tanker transiting the IRTC with water directed over

the side of the ship. Maritime vessels have also installed citadels, a safe room that

protects the crew and cuts off the pirates' ability to control the ship if boarded. In all

Figure 5. Oil Tanker Transiting IRTC Using Best Management Practices
Source: BMP4, *Best Management Practices for Protection Against Somali Based Piracy* (Scotland UK: Whiterby Publishing Group, 2011), http://www.cusnc.navy.mil/marlo/Guidance/BMP4_web.pdf (accessed 21 Jan 2011).

2011 cases, pirates who boarded a ship with a citadel either abandoned the ship or were

captured when naval forces arrived.[27]

Many maritime vessels are now transiting through the high-risk piracy areas

around Somalia with embarked privately contracted armed security personnel. While

embarked armed guards can raise issues with the ship's flag state, the coastal states

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[25] BMP4, *Best Management Practices for Protection Against Somali Based Piracy* (Scotland UK: Whiterby Publishing Group, 2011), http://www.cusnc.navy.mil/marlo/Guidance/BMP4_web.pdf (accessed 21 January 2011).

[26] Ibid.

[27] STRATFOR, "Somali Piracy: 2011 Annual Update," *STRATFOR*, (January, 2011), http://www.stratfor.com/analysis/somali-piracy-2011-annual-update (accessed 15 January 2012).

through which it passes, and the port state where the vessel calls (different laws exist regarding weapons on merchant ships), one statistic is clear; no ship carrying armed security guards has successfully been taken.[28] It is likely that more armed guards will be used in the future as several countries, including United Kingdom, Norway, Italy and India have recently passed laws allowing commercial vessels to employ guards on their flagged ships.

Due to the maritime industry improving its best management practices and the continued effort from international naval forces, if the master of the ship can hold off an attack for 30 minutes, the likelihood of coalition forces to respond to an attack is greatly increased. Over the past two years, it has become clear that if military forces can arrive at the scene of an attack, there is a good chance that pirates will disengage and military forces will disrupt the attack. Secretary of State Hillary Clinton told Congress in March 2011, "we have put together an international coalition, but, frankly, we're just not, in my view, getting enough out of it," noting that international counterpiracy patrols do not appear to be having a deterrent effect, and the payment of ransoms only continues to exacerbate the problem.[29]

Apprehension and Legal Challenges

Numerous pirates captured by naval forces are not being prosecuted. Instead, they are only returned to shore where they are free to resume their illegal activity.

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[28] Edward Lundquist, "Changing Tactics As Somali Pirates Adapt to Efforts to Stop Them, Shippers Devise Guidelines and Defenses of Their Own," *Seapower Magazine,*(December, 2011), (accessed via Early Bird, 7 December 2011).

[29] Congressional Research Service, *Piracy off the Horn of Africa: A Study Prepared for Congress by the Congressional Research Service, April 2011* (Washington DC: Government Printing Office, 2011), 29.

Douglas Burnett, an expert in maritime law, has said that pirates are treated with a "catch and release philosophy that's usually reserved for trout."[30] Despite a considerable increase in piracy in the Gulf of Aden and Indian Ocean since 2007, Somali pirates have taken hundreds of hostages, terrorized commercial and recreational shipping, and imposed a considerable economic burden on the maritime community as described in the prior chapter. Shipping companies pay off the majority of pirates who capture hostages, and even when caught, they are routinely not detained or prosecuted.[31]

Coalition and international counter piracy forces face several legal challenges with detaining and apprehending pirates. First, the Rules of Engagement (ROE) can vary from State to State and international naval warships must abide by their own national ROE and domestic laws. Combined Task Force (CTF) commanders rotate from different nation states and domestic law may prevent a CTF commander from issuing an order which, although lawful for the TF unit to perform, would be unlawful for the CTF command to perform. Since Combined Maritime Forces (CMF) is not a State, it cannot create laws, however, it does issue guidance to those forces assigned to CTF 151 and CTF 150.

The guidance typically provides two ways force can lawfully be used against pirates. The first is in self-defense or defense of others, for example a merchant ship under pirate attack. The second case is to stop a vessel in order to board it. Coalition forces must issue appropriate warnings prior to using force, and usually all efforts of

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[30] Cory Flintoff, *All Things Considered: U.S. Navy Captures Pirates*, NPR (1 April 2010), at http://www.npr.org/templates/story/story.php?storyId=125468411 (accessed 24 January 2012).

[31] Corey Flintoff, *Prosecuting Pirates: No More Walking the Plank*, NPR (Jan. 9, 2010), http://www.npr.org/templates/story/story.php?storyId=99169738 (accessed 24 January 2012).

force are made to ensure that life is not endangered. In short, the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstance. The pirates understand coalition ROE and use it to their advantage by throwing their weapons and pirate paraphernalia overboard if approached by coalition forces, very similar to drug runners during counter drug operations. Three years ago, the former Commander of U.S. Fifth Fleet, Vice Admiral William Gortney, said in exasperation,

> There is no reason not to be a pirate. The vessel I'm trying to pirate, they won't shoot at me. I'm going to get my money. They won't arrest me because there's no place to try me.[32]

The second legal challenge is jurisdictional difficulties since prosecution is not necessarily a straightforward matter. While international law allows all states to exercise jurisdiction, prosecution itself will depend on the nation's State domestic law, and domestic law making piracy a crime may not actually exist. A number of states have discovered that they did not have such legislation, or that the legislation they did have for centuries was, for whatever reason, no longer adequate.[33] States have also feared that if piracy suspects were brought onto their territory, problems relating to due process or human rights might render even successful prosecutions open to challenge or appeal.[34] An example of this occurred in Norfolk, Virginia when six Somali defendants were

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[32] Bernd Debusmann, "To Curb Piracy, Bring On Hired Guns," *Reuters,* in Early Bird (Accessed 18 November 2011).

[33] Marting Murphy, *Somalia, the New Barbary? Piracy and Islam in the Horn of Africa*, (New York: Columbia University Press, 2011), 124.

[34] Ibid., 124.

charged with piracy under U.S. Code 1651 for their attack on the USS ASHLAND.[35]
The judge dismissed the piracy indictment, erroneously concluding that the law did not
include an attack that fell short of ship seizure to be piracy.[36] The U.S. government
appealed the ruling to the Fourth Circuit Court of Appeals. As of this writing, the appeal
is still awaiting final decision before the trial continues.

Difficulty associated with prosecuting maritime piracy has led States to avoid the
courtroom. In one case in 2008, Denmark simply released Somali pirates after capturing
them.[37] The Danish government was not confident it could convict the pirates, even
though they had assault weapons and handwritten notebooks outlining how to split the
spoils of their crime among the warlords.[38] The skiff and the pirates were released, but it
was a troubling outcome to many, including the Commanding Officer of the Danish
vessel involved: "We catch them, confiscate their weapons, and then we let them go . . .
it's frustrating."[39] Since December 2008, international navies have apprehended over
2,000 pirates, but recent figures show a decline, as in May 2010, when it was reported
that more than 9 out of 10 captured pirates had not been prosecuted.[40] Only certain
navies have opted to immediately release pirates, and destroy their skiffs and weapons.

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[35] USS ASHLAND, a dock landing ship, was attacked by Somali pirates in April 2010 off the
coast of Djibouti. The ASHLAND captured all six pirates after exchanging small arms fire and sinking the
pirate's skiff.

[36] Kraska, 114.

[37] Paulo Prada and Alex Roth, "On the Lawless Seas, It's Not Easy Putting Somali Pirates in
the Dock," *Wall Street Journal*, 12 December 2008.

[38] Ibid.

[39] Ibid.

[40] Ban Ki-moon, United Nations Security Council Letter from Secretary General to the President
of the Security Council, *Legal Issues Related to Piracy off the Coast of Somalia* (24 January 2011): 21,
http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/206/21/PDF/N1120621.pdf?OpenElement (accessed
12 December 2011).

The practice has now become the rule, and judicial prosecution appears to be the exception. From August to December 2010, EUNAVFOR Atalanta captured 51 pirates who were immediately freed.[41]

The United States and EU have memorandums of understanding with Kenya and the Seychelles for handing over captured pirates for prosecution, although this has not always led to satisfactory results. In December 2009, the Dutch frigate HNLMS EVERTSON was forced to release 13 suspected pirates because neither Kenya nor Seychelles, nor any other countries in the region were willing to take them. Additionally, Kenya decided in April 2010 to denounce the agreement with the EU, despite having received 1.7 million euros under the Peace Facility in addition to the development aid program.[42] Several European countries operating in EUNAVFOR Atalanta, like France, United Kingdom, Denmark and the Netherlands, are able to prosecute pirates under their national legislation, but are hesitant to do so out of fear for possible asylum requests by pirates, if they are found innocent in European countries.[43] This has led to incidents where pirates captured were brought back ashore, because of a lack of prosecution capabilities. CMF, EU, and NATO release most pirates when there is insufficient proof of them being connected to an attempted attack. In these cases, naval forces are

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[41] Ban Ki-moon, United Nations Security Council Letter from Secretary General to the President of the Security Council, *Legal Issues Related to Piracy off the Coast of Somalia* (24 January 2011): 21, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/206/21/PDF/N1120621.pdf?OpenElement (accessed 12 December 2011).

[42] Kees Homan and Susanne Kamerling, "Operational Challenges to Counterpiracy Operations off the Coast of Somalia," in *The International Response to Somali Piracy: Challenges and Opportunities*, (Boston: Martinus Nijhoff Publishers, 2010), 76.

[43] Bruno Waterfield, "Somali Pirates Embrace Capture as Route to Europe," *The Telegraph*, (19 May 2009) at http://www.telegraph.co.uk/news/worldnews/piracy/5350183/Somali-pirates-embrace-capture-as-route-to-Europe.html (accessed 22 November 2011).

instructed by higher headquarters to disarm the pirates, and additional skiffs, engines, ladders, and communication equipment are either confiscated or disposed of at sea.

NATO lacks any memorandums of understanding with countries in the region to hand over suspected pirates for prosecution. Kenya and the Seychelles have tried suspected pirates in the past, but recently, both have refused to take Royal Navy and U.S. captives because their court systems are overwhelmed. The American, British, Danish and Spanish navies are all currently holding 46 pirates captured during counter piracy patrols since January 2012. British officials are putting intense pressure on Kenya to accept the most recent captives, amid fears of warships turning into floating prisons, according to senior sources in Nairobi.[44]

For centuries, most nations considered piracy a very serious offence, and pirates were regularly killed or executed after a rather cursory hearing by the captain of the ship that captured them.[45] Pirates are not without rights, but the interpretations of these rights are expanded to the point that it undermines the rights of all others. Additionally, the rights enjoyed by pirates must be balanced against concerns for the common good, mainly the safety of mariners, and the right to freedom of navigation in international waters.[46] Some authors have called attention to the expansive interpretations of pirates' rights. A law professor at Northwestern University, Eugen Kontorovich, explains,

> While international law has developed to include many new crimes, the successful
> prosecution of piracy has grown more difficult than it was in the age when ships

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[44] Mike Pflanz, "Royal Navy May Have to Set Pirates Free," *The Telegraph*, (18 January 2012) at http://www.telegraph.co.uk/news/uknews/defence/9023768/Royal-Navy-may-have-to-set-pirates-free.html (accessed 20 January 2012).

[45] Amitai Etzioni, "Somali Pirates: An Expansive Interpretation of Human Rights," Texas Review of Law and Politics, Vol. 15, December 2010. http://icps.gwu.edu/files/2011/03/pirates-TRLP.pdf (accessed 24 September, 2011).

[46] Ibid.

were powered by sails. Although international law obligates nations to repress piracy, many legal rules, practical constraints, and other considerations pull states in the opposite direction.[47]

Others have called the treatment of pirates' rights the equivalent of granting "a get of out of jail card."[48] John Bolton, a former permanent U.S. representative to the United Nations, added that "due process is only that process that is due, and the pirates have already had more than enough."[49]

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[47] Eugene Kontorovich, "A Guantanamo on the Sea: The Difficulties of Prosecuting Pirates and Terrorists," *California Law Review*, Vol. 98:243 (2010): 256, http://www.californialawreview.org/assets/pdfs/98-1/Kontorovich.pdf (accessed 20 January 2012).

[48] John S. Burnett, "Captain Kidd, Human-Rights Victim," *N.Y. Times*, (20 April 2008) http://www.nytimes.com/2008/04/20/opinion/20iht-edburnett.1.12162723.html (accessed 20 January 2012).

[49] John Bolton, "A World Turned Upside Down? U.S. Now a Judicial Target for Defending Lawful Commerce," *Washington Times*, (17 April 2009) http://www.washingtontimes.com/news/2009/apr/17/a-world-turned-upside-down/?page=1 (accessed 20 January 2012).

CHAPTER 3:
HISTORICAL RESPONSES TO PIRACY

Piracy has never truly been eliminated or solved. It is merely only suppressed in

one area, then sprouts up vigorously in another part of the world. History has shown that

acts of piracy generally repeat in cycles, which begin with small-scale attacks on soft

targets, and gradually becomes more organized and frequent, targeting harder and more

valuable targets such that they eventually begin to affect seaborne trade.[1] Those states,

whose maritime commerce is affected, collaborate and mobilize their navies to counter

and combat the pirates. Through collective efforts of their navies, pirate activities are

brought to a standstill with their havens and hideouts destroyed, their leaders and

operators captured, prosecuted, and in some cases killed.[2] These combined actions result

in international waters being declared safe and secure for mariners and maritime

commerce. This chapter will analyze three historic piracy case studies to understand the

alternative solutions for combating piracy, as well as emphasize the case for naval action.

The lessons learned from analyzing history will help to formulate the most viable

response to the threat of modern piracy.

United States Response to Barbary Pirates

The notorious North African pirate, Barbarossa, conquered Algiers and Tunis in

the early sixteenth century. After he obtained the blessing of the Ottomans, he used those

territories as bases for sea raiding. For the next three centuries, the Barbary Pirates

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[1] James Wombwell, *The Long War Against Piracy: Historical Trends,* Occasional Paper 32, (Fort Leavenworth: Combat Studies Institute Press, 2010), 2-3.

[2] Patrick Lennox, "Contemporary Piracy off the Horn of Africa," *Canadian Defense and Foreign Affairs Institute,*(December 2008), http://www.cdfai.org/PDF/Contemporary%20Piracy%20off%20the%20Horn%20of%20Africa.pdf (accessed 24 November 2011).

operated under the support of the government in Tripoli, wreaking havoc on and demanding protection payments from merchant shipping in the Mediterranean.[3] The pirates used long and narrow galleys, powered by manned oars and sail, to ram enemy merchant ships. Like today's Somali pirates, they would use grappling hooks to board the vessel, and then attempt to defeat the crew in hand-to-hand combat using heavily armed pistols and cutlasses. The Barbary Pirates removed cargo from captured ships and mariners were either killed, ransomed, taken as slaves or joined the pirate crew.[4] The motivation for piracy was obvious, as the Barbary States could earn ransoms of $250,000 along with annual tributes of $50,000, while the risks were kept minimal as they enjoyed the protection and encouragement of the local government.[5] Mariners under attack tried to prevent pirates boarding by greasing decks or scattering dried peas or broken glass on the decks, similar to the international maritime industry hardening their ships using best management practices.

For years, nations deemed it cheaper to pay the Barbary Pirates off than to fight them. Rather than confront the state sponsored piracy directly, the U.S. and European nations chose instead to purchase peace through payments of tributes and ransoms to ensure the pirates would not attack their shipping.[6] Similar to today's Somali pirates, this answer proved counterproductive and unsustainable, as ransom payments only

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[3] Max Boot, "Pirates, Then and Now," *Foreign Affairs*, Vol. 88, Issue 4, (July/August 2009), https://www.ciaonet.org/journals/fa/v88i4/08.html (accessed12 December 2011).

[4] "A Brief History of Piracy," The National Museum of the Royal Navy, http://www.royalnavalmuseum.org/info_sheets_piracy.htm (accessed 22 November 2011).

[5] Robert Turner, "President Thomas Jefferson and the Barbary Pirates." Edited by Bruce A Elleman, Andrew Forbes and David Rosenberg, *Piracy and Maritime Crime: Historical and Modern Case Studies*, (Newport: Naval War College Press, 2010), 159.

[6] Benerson Little, *Pirate Hunting: The Fight Against Pirates, Privateers, and Sea Raiders From Antiquity to the Present* (Washington: Potomac Books Inc., 2010), 213.

encouraged future attacks. America confronted the Barbary Pirates in the late eighteenth

and early nineteenth centuries, when U.S. merchant ships and crews were subject to

routine attacks while transiting the North African coast. With the Treaty of Paris in 1783,

which formally recognized the independence of the United States, the British Empire no

longer protected its commerce.[7] The subsequent seizure and ransoms paid to the Barbary

States motivated the United States Congress to build its first formal Navy in order to

protect its overseas shipping. In 1801, President Thomas Jefferson directed his newly

developed Navy to sail to the Mediterranean and engage the Barbary pirates to prevent

their seizure of U.S. vessels and taking hostages.[8] The United States intensified its

military and diplomatic efforts, eventually ending the tribute payments to Barbary pirates

in 1815.[9]

The United States Navy's combined efforts of engaging the Barbary Pirates at

sea, providing an effective blockade of Tripoli, and sending Marines ashore to overthrow

the Pasha of Tripoli, forced the Pasha to sue for peace with no preconditions and to cease

his support for piracy. Following this decisive defeat, the other Barbary states soon

followed in seeking peace with the United States. Emboldened by the success of the

U.S., the European states followed in their rejection of the Barbary pirates, and piracy in

the Mediterranean was significantly reduced.[10] Through this military intervention,

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[7] Robert Turner, "President Thomas Jefferson and the Barbary Pirates." Edited by Bruce a Elleman, Andrew Forbes and David Rosenberg, *Piracy and Maritime Crime: Historical and Modern Case Studies*, (Newport: Naval War College Press, 2010), 158.

[8] Ibid., 162.

[9] Andrew Shapiro, "U.S. Approaches to Counter-Piracy," Remarks to International Institute for Strategic Studies, (March, 30, 2011). http://www.state.gov/t/pm/rls/rm/159419.htm (accessed 5 July 2011).

[10] Turner, 168.

Jefferson became the first leader of a Western maritime nation to establish a policy of military action against piracy.[11]

British Response to Riff Pirates

In the nineteenth century, the British had to contend with a pirate band east of the Strait of Gibraltar and along the northern coast of Morocco. The Riff pirates depended on fishing and coastal trade for their livelihoods. In the 1830s, the French occupied Algeria, disrupted coastal trade, and the Spanish increased their attacks on Riff coastal shipping.[12] These actions prompted the Riff pirates to resort to smuggling and piracy as an alternative profession, and instead, used their fishing boats to prey on sailing ships passing through the Straits of Gibraltar.

The Riff coast, similar to today's Somali coast, presented an ideal location for piracy to flourish. The isolated coast contained an extremely poor population, provided an effective safe haven, and was in close proximity to attractive maritime commerce routes. The Riff pirates, who began only as a minor irritant to maritime shipping, eventually increased the intensity of their attacks. From 1846 to 1856, eight ships were attacked off the Moroccan coast – six British, one French, and one Prussian.[13] The pirates towed their prize ships to the beach and stripped them of cargo, equipment, and recoverable metals, before burning the hulks. Crewmembers were held for ransom, just as Somali pirates execute their business today.

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[11] Douglas Browning, "Port Safety," Presented at the International Symnposium on Maritime Security & Terrorism held in Arlington Virginia, on 21-23 September 1981, http://psi.praeger.com/doc.aspx?d=/books/gpg/C9750/C9750-03642.xml (accessed 15 December 2011).

[12] Andrew Lambert, "The Limits of Naval Power, The Merchant Brig Three Sisters, Riff Pirates, and British Battleships," Edited by Bruce Elleman, Andrew Forbes and David Rosenberg, *Piracy and Maritime Crime: Historical and Modern Case Studies*, (Newport: Naval War College Press 2010), 174.

[13] Ibid., 173.

The British, French, and Prussian governments considered a range of naval and military options, but Moroccan forces ultimately resolved the problem when the Riff pirates attacked a ship owned by the Sultan of Morocco.[14] The standard British response to Riff piracy incidents was to send a warship, recover the merchant vessel, and "reprimand the insolent barbarians."[15] In May 1846, the British sent the HMS FONTOME to recover the captured merchant brig RUTH. The crew drove the pirates off the beach, and recovered the brig along with her cargo.[16] Riff pirates attacked the merchant brig THREE SISTERS in November 1848, and this time the British responded with a steam warship stationed in Gibraltar. It quickly transited to the Riff coast and drove the pirates from their positions with well-directed cannon fire. When the Riffs fell back, a boarding party managed to weigh the brig's anchor, and tow the brig out to sea.[17] In October 1851, Riff boats captured the brigantine VIOLET, plundered the cargo, and killed some of the crew. Britain dispatched HMS JANUS, which pounded the pirates with ten-inch shells from its main battery guns. A raiding party from the ship rowed ashore under heavy musket fire, dispersed the pirates, and destroyed some of their boats.[18]

Over the ten year period that Riff pirates posed a nuisance to merchant shipping, Britain continued to punish them for specific incidents, but could not stop them without deploying a significant naval and military force ashore. The Moroccan government had

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[14] W. B. Lord, "The Last of the Sea Rovers: The Riff Coast Pirates," Edited by Joseph French, *Great Pirate Stories*, (New York: Tudor Publishing,1922), 312 .

[15] Lambert, 175.

[16] Ibid.

[17] Ibid., 177.

[18] Ibid., 185.

to finally take decisive action to end significant Riff piracy by attacking their safe havens

ashore in August 1856. The Sultan sent an army of eight thousand troops to burn their

boats and villages, impose fines, seize livestock, and take hostages for future good

behavior.[19]

Chinese Response to East Asian Pirates

Piracy existed in Asian waters for thousands of years and has continued through

modern times. The narrow straits of Southeast Asia provide an attractive location for

pirates, and the restrictive waters cause merchant shipping to slow their speed during

transit. Many coves and bays create safe havens, and make perfect hiding places for

pirates. Piracy became the profession of choice due to unevenly distributed wealth,

seafarer's low wages, and large number of natural disasters that threw thousands of

fishermen out of work.[20] The pirates thrived on China's junk trade, which was vital to

Chinese commerce, particularly in provinces bordering the South China Sea.

In Chinese history, the execution of pirates was common. Capital punishment for

piracy included beheading or death by slicing, also known as the lingering death.[21]

Piracy had become so relentless by the late eighteenth century, that one emperor allowed

officials along the coast to execute pirates immediately after trial.[22] As a warning to

others, pirates' severed heads were displayed in public, usually at the entrance to port

towns and fishing villages.

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[19] Ibid., 187.

[20] Robert Antony, "Pirates on the South China Coast through Modern Times," Edited by Bruce Elleman, Andrew Forbes and David Rosenberg, *Piracy and Maritime Crime: Historical and Modern Case Studies*, (Newport: Naval War College Press, 2010), 39.

[21] Ibid., 36.

[22] Ibid.

The most powerful pirate fleets in East Asian history were those of the Chinese

pirates during the Qing dynasty, which ruled from 1644 until the early twentieth century.

The Qing dynasty paid little attention to piracy along the South China Sea, and when

officials finally recognized piracy as a problem, several powerful pirate leagues had

developed that took many years to subdue.[23] Like other historic pirates, native Chinese

pirates demanded payments of tribute and extortion, and dominated many of the seaside

villages, towns, markets, fishing, and shipping industries. By the nineteenth century,

Chinese pirates grew increasingly powerful and they had a widespread effect on Chinese

black market trade.

One of the largest criminal organizations, the Guangdong Confederation, formed

in 1804, when Zheng Yi, who inherited the pirate fleet from a deceased cousin, combined

efforts with Zheng Yi Soa, a prostitute who eventually became his wife.[24] The couple

launched successful attacks from the South China Sea coast under the banner of the Red

Flag Fleet. Their Guangdong Confederation became a state within a state, exercising

control over the maritime society independent of, and even overshadowing, that of the

government and local elites.[25] When Zheng Yi passed away in 1807, his wife took over

the operation. Zheng Yi Sao became one of the most powerful and famous female

pirates, leading a powerful fleet that was larger than many countries' navies. Her

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[23] Three major pirate chieftains existed along the South China coast from 1780 to 1810: Cai Qian in Fujian, Zhu Fen on the Fujuan-Guangdong border, and Zheng Yi, who led the Guangdong Confederation in Robert Antony, "Pirates on the South Chinna Coast through Modern Times," Edited by Bruce Elleman, Andrew Forbes and David Rosenberg, *Piracy and Maritime Crime: Historical and Modern Case Studies*, (Newport: Naval War College Press, 2010), 39.

[24] James Kraska, *Contemporary Maritime Piracy, International Law, Strategy and Diplomacy at Sea* (Santa Barbara, California: Praeger, 2011), 19.

[25] Antony, 41.

organization consisted of 80,000 sailors and 1,500 ships.[26] After eluding capture by the

Chinese navy, and British and Portuguese bounty hunters, she was offered a pardon in

1810 in exchange for peace. Once Zheng Yi Sao surrendered, the pirate leagues began a

quick decline.

From 1840 until 1890, South China Sea piracy persisted during the Opium Wars,

Taiping Rebellion, and the Arrow War. As the new British colony established in Hong

Kong, pirate activity increased, resulting from increased trade, and a corrupt and

inefficient Hong Kong government.[27] In 1847, the Hong Kong government enacted its

first antipiracy legislation, and the Royal Navy began to take a more active role in

suppression.[28] The Navy eventually was allowed to pursue pirates into Chinese harbors,

and British steam warships quickly eliminated the junk pirate fleet. The Royal Navy

conducted campaigns that nearly destroyed two pirate armadas, and by maintaining an

active year round presence, they eventually assisted China in suppressing piracy.[29]

The defeat of South Asian piracy resulted from combined naval campaigns,

punishing retribution, and liberal offers of amnesty that eventually succeeded in wearing

down the pirates and pacifying the coastal population.[30] If there is one lesson to be

learned from these case studies and Jefferson's success against the state sponsored

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[26] Maggie Koerth, "Most Successful Pirate Was Beautiful and Tough, *CNN.com*, August 28, 2007, http://edition.cnn.com/2007/LIVING/worklife/08/27/woman.pirate/index.html (accessed 18 December 2011) .

[27] Antony, 42.

[28] Ibid., 44.

[29] The British Navy engaged two notorious pirate gangs in 1849. Shap-ng-tsai escaped, but Chu-apoo was catured and committed suicide in jail in Robert Antony, "Pirates on the South China Coast through Modern Times," Edited by Bruce Elleman, Andrew Forbes and David Rosenberg, *Piracy and Maritime Crime: Historical and Modern Case Studies*, (Newport: Naval War College Press, 2010), 42-44.

[30] Robert Antony, *Like Froth Floating On The Sea: The World of Pirates and Seafarers in Late Imperial South China* (Berkeley: Institute of East Asian Studies, 2003), 51-52.

Barbary pirates, it is the importance of creating appropriate disincentives.[31] Piracy was defeated with aggressive maritime naval engagement, and governments took action to eliminate pirate safe havens ashore. In today's fight against Somali pirates, the international community and maritime forces patrolling the Somali coastline must take actions that present a greater disincentive for Somali pirates. These will be presented in the final chapter.

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[31] Turner, 168.

CHAPTER 4:
A MARITIME APPROACH TO SUPPRESSING PIRACY

There is broad consensus in the international community that the main solution to ending Somali piracy is a strong, stable government in Somalia. To date, however, the international community has limited itself to treating only the symptoms and not the root causes of piracy. Combined Maritime Force Commander, Vice Admiral Gortney, emphasized this point during his 2009 testimony before the House Armed Services Committee:

> Ultimately, piracy is a problem that starts ashore and requires an international solution ashore. We made this clear at the offset of our efforts. We cannot guarantee safety in this vast region.[1]

Once a viable Somali government is able to overcome the lawlessness that has existed for almost twenty years, piracy might cease to exist. Somalia needs a coast guard to enforce maritime law, and an effective judicial system to provide a disincentive to piracy through the threat of prosecution and punishment. Presently the only judicial system that exists is at the local level, and is based on Sharia law, or traditional Somali customary law.[2] The United Nations established the current Transitional Federal Government (TFG) in Mogadishu in 2004. Although it is not in power due to free and fair public elections, it does retain some characteristics of a democratic institution, and it is representative of Somali society and clans. In 2009, the Transitional Federal Assembly in Djibouti elected President Sharif Sheik Ahmed, but neither he nor Prime Minister Abdiweli Mohamed Ali has been able to stabilize the country, or establish itself outside of Mogadishu.

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[1] U.S. House of Representatives, Committee on Armed Services, *Hearing: Combating Piracy on The High Seas*, Testimony by William E. Gortney, Vice Admiral, USN, 5 March, 2009, U.S. Government Printing Office, (Washington, 2010), 2.

[2] Sharia law is the moral code and religious law of Islam. Peter Eichstaedt, *Pirate State Inside Somalia's Terrorism at Sea*, (Chicago: Lawrence Hill Books, 2010), 45.

Somalia needs economic growth to create an alternative to the perceived benefits of piracy. Steady incomes and profitable, legitimate businesses will make piracy less lucrative. However, a sustainable economy in Somalia is a long term goal. Overseas companies and the international community are both wary of investing in Somalia due to the unstable environment. Thus, until the security and economic situations improve in Somalia, or the international community dedicates itself to nation building in Somalia, piracy is predicted to continue to harass shipping in the global commons near the Somali coastline.

In the meantime, in order to develop a future strategy with options to combat Somali piracy, the international community and the United States need to examine and learn from history. States contributing to current counterpiracy operations need to understand the lessons of the Barbary, Riff, and East Asian pirates. There are options outside of the current counterpiracy model. These include diplomacy, financial pressure, international legal cooperation, on-board deterrents, littoral patrols, and naval military action (shown in Figure 6), and are available to the international community and shipping industry to pursue their fight against piracy. Their combined efforts can lessen the effects of piracy on the maritime community.
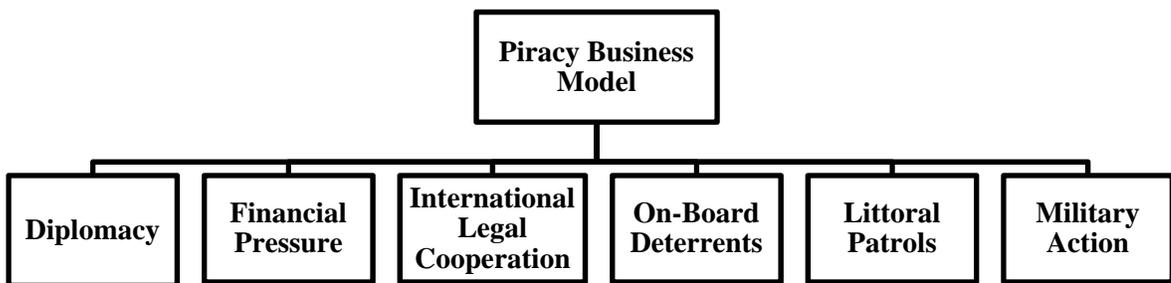
Figure 6. Critical Vulnerabilities to the Piracy Business Model

Diplomacy

History indicates diplomacy can be an effective approach to counter piracy efforts. During the Barbary era, the United States was able to exercise its limited diplomatic power with various European powers to negotiate protection arrangements and peace agreements. U.S. diplomats negotiated tribute payments that provided for the release of hostages, and included annual payments that guaranteed safety for American ships. These lessons can be applied to Somalia, but will need to be done so in a different manner. The Somali TFG has already made it clear that it is willing to work with the international community to fight piracy off its shores. The TFG has reached out to the United Nations, pleading for help, as there is only so much it can do on its own. Secretary of State Hillary Clinton pledged to establish a diplomatic team to work with officials from the TFG and regional leaders, especially those in Puntland, who were already taking action to establish a coast guard and a prison facility.[3] The ultimate goal of this diplomacy is to pressure local Somali leaders into taking actions against the pirate organizations that operate in the territories they control.

Another diplomatic option is one already being accomplished; that of reaching out to the international community to assist with counter piracy operations. The Contact Group on Piracy off the Coast of Somalia (Contact Group) needs to develop a single comprehensive strategy that focuses a response, coordinates naval action, and provides a single international message condemning piracy.[4]

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[3] Congressional Research Service, *Piracy off the Horn of Africa: A Study Prepared for Congress by the Congressional Research Service, September 2009* (Washington DC: Government Printing Office, 2009), 3.

[4] The Contact Group was formed pursuant to the United Nations Security Council Resolution 1851 to coordinate international counterpiracy efforts. For additional information on the Contact Group see http://www.state.gov/t/pm/ppa/piracy/contactgroup/index.htm (accessed 5 June 2011).

Diplomacy will likely not on its own affect the Somali pirate situation. The

Somali TFG is not seen as entirely legitimate, nor was it elected into power by the Somali

people.[5] The TFG is willing to cooperate with the international community, but it has

neither the stability nor law enforcement capabilities nor a working judicial system.

There is no guarantee that negotiating with warlords or clan leaders will provide a

permanent solution. Warlord and clan leaders operate on their own self-interests and

have the potential to weaken the government further.

Financial Pressure

A second option is placing financial pressure on the pirates. The Barbary and

East Asian piracy case studies illustrated how tributes and ransoms failed to end the

piracy problem. Although for Somali piracy, ransom payments do yield immediate

results. Once a negotiation is agreed to, and the money delivered to the pirates, the

business deal is essentially complete. This method insures the safe return of the captured

vessel and its cargo to the shipping company. More importantly, ransom payments have

resulted in the captured crew being safely returned with the vessel. But these conditions

are not guaranteed and can be changed any time. Somali pirates have already killed

hostages and made additional threats. There are risks associated with paying ransoms.

First, it leaves vessels more prone to future attack. Since pirates are simply reaping the

benefits of ransom payments, they are going to continue attacking vessels in the Gulf of

Aden and Indian Ocean until their approach is no longer profitable. Second, pirates have

the upper hand during negotiations. If a shipping company is unable or unwilling to pay

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[5] Martin Murphy, *Somalia, the New Barbary? Piracy and Islam in the Horn of Africa*, (New York: Columbia University Press, 2011), 145-146.

the desired ransom, or deliver it in cash, Somali pirates have little choice but to threaten the safety of the captured crew.

Shipping companies should limit ransom payments and hold those accountable supporting the flow of money to Somalia. U.S. and international officials suspect that in some cases, Somali businessmen and international support networks may provide financing, supplies, and intelligence to pirate groups in exchange for shares of ransom payments.[6] The international community should apply the lessons learned from the Barbary pirate threat, and adopt a hard stance against paying future pirate ransoms. The U.S. government has helped elevate the pirate financing issue within the Contact Group. State and Justice Departments are working with partner governments and international organizations (United Nations and INTERPOL) to develop collaborative events linking experts on pirate financing. The President also signed an executive order in 2010 dealing with the tracking of pirate funds and assets, a tactic that has already proven successful against terrorist organizations.[7] The long term effect of these actions would result in piracy being less attractive or lucrative employment.

International Legal Cooperation

Somali piracy is flourishing because it is also nearly consequence free. A third option is to improve regional legal cooperation in order to prosecute and hold pirates

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[6] U.S. Government Accountability Office, *Maritime Security: Actions Needed to Assess and Update Plan and Enhance Collaboration Among Partners Involved in Countering Piracy off the Horn of Africa: A Report to Congressional Requestors by the Government Accountability Office, September 2010* (Washington DC: Government Printing Office, 2010), 9.

[7] In April 2010, the President signed an Executive Order that blocks all property or interests in property within U.S. jurisdiction of any persons that are listed in the order and allows for designation of other persons that threaten the peace, security, or stability of Somalia, including those who support or engage in acts of piracy off the coast of Somalia. U.S. government can take enforcement action against private companies for paying ransoms to individuals designated in the executive order. Only two pirates have been designated thus far in the order. GAO Report, September 2010, 67.

accountable, and thus increase the risks to Somali pirates. While it may seem logical to hold Somali pirates accountable by execution, just as China did in the eighteenth century, this solution would not be considered humanitarian today by the international community. There is broad consensus by many in the international community that by developing a strong legal deterrent, alongside the dangers already involved in conducting pirate attacks, the number of Somali men joining the ranks of piracy gangs will significantly decrease.[8] Therefore, the international community should continue to seek legal cooperation to address the issue of impunity, which many Somali pirates have come to enjoy.

The current counterpiracy response is based upon International Criminal Court (ICC) and judicial tenants defining criminality of piracy. According to the Civil-Military Fusion Center (CFC), regional states have offered to take on piracy prosecutions, particularly the governments of Kenya and the Seychelles.[9] These states, however, require substantial international assistance to continue to meet naval force requirements because of the steady influx of captured pirates. Since April 2010, Kenya has shown less willingness to continue to support this initiative. Additional international community investment is necessary to allow countries to assist in prosecuting pirates. The European Union recently established a pre-trial transfer agreement with Mauritius, an island off the

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[8] Edoardo Collevecchio, "Piracy off the Horn of Africa: Shifting incentives to induce behavioural change, Part II", *Consultancy Africa Intelligence*, (May 2011), http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=747:piracy-off-the-horn-of-africa-shifting-incentives-to-induce-behavioural-change-part-ii-&catid=60:conflict-terrorism-discussion-papers&Itemid=265 (accessed 21 February 2012).

[9] The CFC is an information and knowledge management organization focused on improving civil-military interaction, facilitating information sharing and enhancing situational awareness through the internet and weekly and monthly publications. Amber Ramsey, "Barriers to Prosectution The Problem of Piracy," *Civil Military Fusion Center*, (September 2011), 2. https://portal.mmowgli.nps.edu/c/wiki/get_page_attachment?p_1_id=33393&nodeId=10773&title=Published+papers&fileName=Published+papers%2FCFC_Anti-Piracy_Report_Prosecution_Aug_2011_FINAL.pdf (acccessed 12 February, 2012).

coast of Madagascar.[10] The United Nations Office of Drugs and Crime (UNODC) is also making promising efforts. UNODC is assisting Tanzania and the Maldives to improve their capacity to take on piracy prosecutions. UNODC is also providing assistance to improve prison capacity within Somalia, including the one that opened last year in Hargeisa, Somaliland, and future additional sites planned for in Putland at the towns of Bosasso and Garowe.[11]

The establishment of prosecution centers in Somalia will take some time because the current government does not have a justice system in place that is capable of prosecuting pirates. Therefore, the United Nations should consider convening a specialized regional tribunal, for example in Djibouti or Seychelles, and charge it with providing all means to prosecute and punish captured Somali pirates. This would allow coalition naval forces a place for transferring captured pirates for follow-on prosecution. If found guilty, the pirates can then be transferred to either the newly established prison in Somaliland or future holding facilities in Puntland, once they are made available. Authority to capture pirates already exists in the United Nations based upon the ICC and judicial tenants defining criminality of piracy as described in chapter two.

On-Board Deterrents

The fourth option is for shipping companies to continue on-board deterrents and best management practices for all ships transiting piracy-infested waters. During the

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[10] "Seychelles and Mauritius Sign Pirates Transfer Agreement," *ETN Global Travel Industry News*, (July 2011), http://www.eturbonews.com/24134/seychelles-and-mauritius-sign-pirates-transfer-agreement (accessed 12 February, 2012).

[11] Amber Ramsey, "Barriers to Prosecution The Problem of Piracy," *Civil Military Fusion Center*, (September 2011), 5-7. https://portal.mmowgli.nps.edu/c/wiki/get_page_attachment?p_l_id=33393&nodeId=10773&title=Published+papers&fileName=Published+papers%2FCFC_Anti-Piracy_Report_Prosecution_Aug_2011_FINAL.pdf (acccessed 12 February, 2012).

Barbary era, both maritime ships and naval patrols utilized maneuvering and on-board deterrents. Commercial vessels were prone to attack from similar size Barbary pirate vessels. A ship was able to avoid capture by Barbary pirates if the master could outmaneuver the enemy vessel, or its crew was successfully able to defeat the attacking pirates in combat. These safety measures against Barbary pirates illustrate the necessity for the United States and international community to encourage commercial shipping to practice evasive maneuvering and utilize other on-board deterrents as promulgated in Best Management Practices.[12]

The use of the Long Range Acoustic Device (LRAD) and Active Denial System (ADS) are good deterrents for any vessel, especially larger ships that cannot move quickly. Both of these systems were developed for U.S. Navy ships following the terrorist attack on the USS COLE while at anchorage in Aden, Yemen. The LRAD system broadcasts directed sound translated warnings at uncomfortably high volumes to inform inbound small craft to avoid established security zone around ships. The ADS emits focused high-powered acoustic beams of energy that create unbearable burning sensations on the skin. Both of these systems can be installed and used on commercial vessels and prevent pirates from getting close to the ship, as well as provide time for the crew to prepare additional defensive measures. While naval patrols can be contacted in case of emergency, on-board deterrents are a first step in preventing pirates from boarding, and are usually effective. In addition, shipping companies who increase preventive measures on their vessels may decrease future insurance costs while traveling through pirate risk areas in the Gulf of Aden and Indian Ocean.

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[12] BMP4, *Best Management Practices for Protection Against Somali Based Piracy* (Scotland UK: Whiterby Publishing Group, 2011), http://www.cusnc.navy.mil/marlo/Guidance/BMP4_web.pdf (accessed 21 Jan 2011).

In an appearance before the House Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, General David Petraeus urged merchant vessels traversing pirate infested waters to utilize more on-board deterrents.

> Shipping companies must realize there is no way a limited number of warships from the United States and other countries can protect thousands of vessels across an enormous ocean area off the coast of Somalia. They are going to have to take a very hard look at not just taking additional defensive preparations in terms of simple things, like concertina wire to make it harder to climb over the side, or again over a railing, but also looking at the employment of armed guards or security forces.[13]

Although the amount of Somali pirate attacks increased in 2011, successful hijackings were reduced due to the preventive measures used by merchant vessels, including the use of citadels, and employment of privately contracted armed security personnel. The use of private armed security guards on ships, transiting the High Risk Area within the IRTC, has increased considerably over the last year. The United Kingdom and several other states temporarily permitted their use onboard their flagged vessels in exceptional circumstances subject to measures to comply with national law.[14]

Although industry still has concerns over the use of such guards, the most successful shipboard protective measures are armed security details, since no ship employing them has successfully been pirated. Due to embarked armed guard success, the International Maritime Organization and Contact Group need to produce interim

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[13] Charley Keyes, "Petraeus Tells Shipping Companies to Get More Serious About Piracy," *CNN.com*, April 24, 2009, http://www.cnn.com/2009/WORLD/africa/04/24/petraeus.pirates/index.html (accessed 21 January, 2012).

[14] Henry Bellingham, "Moving Forward on our Shared Agenda to Tackle Piracy Off The Coast of Somalia: Recommendations for the London Conference on Somalia," *Neptune Maritime Security*, February 24, 2012, http://neptunemaritimesecurity.posterous.com (accessed 24 February 2012).

guidance for private maritime security companies. Shipping companies need to publicize

their capabilities to resist pirate attacks.

Littoral Patrols

A fifth option, and probably the most effective piracy deterrent, is the use of

littoral patrols, operating along the Somali coastline. These patrols can have the most

immediate effect, more so than any other option discussed thus far. In the past few years

CTF- 151 has used coalition naval assets to conduct littoral patrols, referred to as focused

operations, along the Somali coast to monitor pirate havens.[15] Utilizing littoral patrols

can prevent the pirates from leaving their territorial waters, and becoming a threat to the

international shipping lanes. The littoral patrols can serve as a deterrent and support law

enforcement, possibly relieving navies from escort duties in the international

recommended transit corridor (IRTC), as well as addressing some of the grievances of the

pirates and Somali people.

Littoral patrols are able to scan both the water and land for activity. Knowing

where the pirate havens are located (Figure 1), the patrols have an advantage as they can

specifically target these areas, keeping watch for suspicious vessels -- small skiffs

traveling in groups of two or three, certain number of crew, lack of fishing equipment, or

the presence of heavy weapons and ammunition. If equipped with the proper surveillance

technology, the personnel aboard have a better chance of knowing when and where pirate

vessels are launching, and thus have a better chance of thwarting attacks. Littoral patrols

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[15] Depending on the nature of operations, some naval units patrol close to the Somali coastline in areas where intelligence has provided information on upcoming events to deter pirates from leaving territorial waters. The remainder of assigned CTF-151 naval units patrol closer to the merchant shipping lanes in the IRTC to disrupt pirate attacks.

can interdict suspicious boats in territorial water before they can get into a position to conduct an act of piracy.[16]

If a law enforcement component is added to the patrol, then it could detain, arrest, and hand over pirates to coastal authorities able to prosecute them. A law enforcement role could also help address the grievances of the Somali people, as well as the original purpose of the Somali Coast Guard pirate organizations, that of guarding territorial waters from illegal fishing, and toxic dumping in Somali waters. With the waters free for Somalis to safely and profitably fish in, it is likely pirate attacks would decline, just as they did for the Barbary pirates once the United State blockaded Tripoli harbor.

The international community should consider assisting Puntland and Somaliland with training and equipping an organic coast guard along the northern Somali coast. In the south, Somalia is developing a coast guard by training five hundred Somali sailors in the old Mogadishu port.[17] This would be the first step in developing Somalia's maritime capacity including littoral patrols. Supporting a Coast Guard on the northern Somali coast would both immediately lessen the current threat to merchant shipping in the region and contribute to improving the security situation in support of building governance capabilities in the territory of the former Somali Democratic Republic.[18] Somaliland's

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[16] Kees Homan and Susanne Kamerling, "Operational Challenges to Counterpiracy Operations off the Coast of Somalia," in *The International Response to Somali Piracy: Challenges and Opportunities*, (Boston: Martinus Nijhoff Publishers, 2010), 87.

[17] James Kraska, "Fresh Thinking For an Old Problem, Report of the Naval War College Workshop on Countering Maritime Piracy, *Naval War College Review*, Vol 62, No. 4, (Autumn, 2009), 151.

[18] Somaliland declared its independence for Somali in 1991. Kees Homan and Susanne Kamerling, "Operational Challenges to Counterpiracy Operations off the Coast of Somalia," in *The International Response to Somali Piracy: Challenges and Opportunities*, (Boston: Martinus Nijhoff Publishers, 2010), 54.

Interior Minister, Mohamed Nur Arale, told Reuters his authorities were ready to use

additional external funding to strengthen its fledgling anti-piracy operations,

> We want to build the capacity of the maritime police through additional
> equipment and training. The more their capacity is improved, the more effective
> their efforts to deter piracy will be, both inland and offshore.[19]

Somaliland's Coast Guard operates out of Berbera, and consists of two working

speedboats with a large caliber machine gun mounted in the bow. Each are manned by a

few dozen sailors that are supposed to control piracy along 850 miles of remote

Somaliland coastline stretching from Djibouti on the west to neighboring Puntland on the

east.[20] The international community has promised assistance, but to date, only UAE is

providing additional boats to the Puntland marine police force. Future success of littoral

patrols are still hampered by lack of courts and facilities in Somalia, and will require a

tiered multi-layer approach with international and Somali partnership to hold pirates

accountable by using the international tribune.

Until such capability is developed in the Horn of Africa region, navies should

invest more in frigates, light corvettes, ocean and offshore patrol vessels, helicopters, and

unmanned aerial vehicles (UAVs) that could handle coastal operations to monitor and

intercept small boats along the coast. The use of littoral patrols by Somaliland, Puntland,

and neighboring states might eventually relieve the international naval patrols operating

in the Gulf of Aden and Indian Ocean.

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[19] Al-Arabiya News, "Somaliland Recognizes Piracy as a Crime, Convictions to Bring Max Jail Term of 25 Years," *Alarabiya News*, (22 February 2012), http://english.alarabiya.net/articles/2012/02/22/196357.html (accessed 23 February 2012).

[20] Peter Eichstaedt, *Pirate State Inside Somalia's Terrorism at Sea*, (Chicago: Lawrence Hill Books, 2010), 149.

Military Action

Finally, as indicated in the Barbary, Riff, and East Asian piracy case studies, military action against pirate havens ended piracy in the eighteenth and nineteenth centuries. Governments understood that pirates could not be afforded the luxury of safe havens. The current counterpiracy response should be based on the threat to Nations, which could initiate UN Article 51 rights, allowing coalition naval forces to conduct military operations vice just international police actions at sea.[21] The United States and other international governments have responded with aggressive action toward pirates. Naval forces today should target pirate havens, especially if confirmed abandoned, without risk of civilian casualties, and prevent pirate action groups from going to sea.

UNSCR 1851, approved in December 2008, authorizes states, in cooperation with the Somali Transitional Federal Government (TFG), to extend counter-piracy efforts, to include potential operations in Somali territorial land and airspace, to suppress acts of piracy (Appendix 1). The NSC's Counter Piracy Action Plan states that piracy at sea can be abated only if pirate bases ashore are disrupted or dismantled. Additionally, the plan affirms that the appropriate authority to disrupt and dismantle pirate bases ashore has been obtained from the United Nations Security Council and Somali authorities, and also states the United States will work with concerned governments and international

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[21] UN Article 51 states, "nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security," in Charter of the United Nations, Chapter VII: Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, http://www.un.org/en/documents/charter/chapter7.shtml (accessed 14 March 2012).

organizations to disrupt and dismantle pirate bases to the fullest extent permitted by national law.[22]

The international community has not taken steps to disrupt and dismantle ashore pirate bases, but the U.S. has indicated a willingness to consider such actions. In March 2011, testifying before the Senate Appropriations Committee, Secretary of State Hillary Clinton urged military action, stating, "It's hard to imagine that we're going to be able to resolve this until we go after their land-based ports.

Somali pirate camp locations are known from the recent years of intelligence collection. Pirate action groups are limited to approximately six months of at-sea operations. During the summer and winter monsoon seasons, the high seas prevent small boat operations, and pirates use this time to focus on preparing for the next hunting season.[23] Prior to going to sea, their beach safe havens (shown in Figure 1) begin to resemble supply depots. Coalition navies could conduct operations against these pirate camps to destroy stockpiled supplies (skiffs, fuel barrels, supplies, and ladders) and prevent pirate action groups from going to sea. These actions could be coordinated along with littoral patrols to prevent pirates from openly preparing for operations.

As historic piracy case studies indicate, piracy has a way of drawing countries into action. China is taking on increasingly aggressive military measures, as Somali pirates have attacked its merchant fleet in the Indian Ocean, and are currently holding a

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[22] U.S. Government Accountability Office, *Maritime Security, Actions Needed to Assess and Update Plan and Enhance Collaboration Among Partners Involved in Countering Piracy off the Horn of Africa: A Report to Congressional Requestors by the Government Accountability Office, September 2010* (Washington DC: Government Printing Office, 2010), 66.

[23] The monsoon season is active twice a year in the Indian ocean with the summer monsoon (July to September), and the winter monsoon (December to February), and prevents pirates from going to sea in their small skiffs. Local fisherman also minimize their time at sea due to the heavy winds and increased sea state.

number of Chinese nationals captured in various hijackings. It responded by sending a naval task force to the Gulf of Aden in 2008, marking its first deployment of naval power far away from its shores.[24] Since then, China has conducted convoys to protect its shipping, and has patrolled regularly in the international recommended transit corridor (IRTC).

China's top general, General Bingde, suggested that the rest of the world put aside their differences, and team up to launch amphibious assaults on Somali pirates' onshore havens. He called for military action against Somali pirate bases on land, not just against their minions at sea, and was quoted saying, "For counter-piracy campaigns to be effective, we should probably move beyond the ocean and destroy their bases on the land."[25] While China is considering taking more aggressive military actions, the French have already done so. In April 2008, French forces attacked Somali pirates on land, killing some and recovering part of the ransom money after the pirates had hijacked the French luxury ship LE PONANT.[26] There were no complaints by the international community and the TFG appeared satisfied by these actions.

Although history indicates aggressive action against pirate havens were successful, these actions present some risks. Some of the havens are located among local populations, making targeting selection difficult. History shows delays in military action

[24] Adam Rawnsley, "China to Pirates: All Your Bases Belong to Us," *Wired*, 19 May 2011, http://www.wired.com/dangerroom/2011/05/china-to-pirates-all-your-base-are-belong-to-us (accessed 6 November 11).

[25] General Chen Bingde, the chief of general staff of China's People's Liberation Army commented at the National Defense University on 18 May 2011 in Adam Rawnsley, "China to Pirates: All Your Bases Belong to Us," *Wired*, 19 May 2011, http://www.wired.com/dangerroom/2011/05/china-to-pirates-all-your-base-are-belong-to-us (accessed 6 November 11).

[26] Nathan Hodge and Julian E. Barnes, "Team America Meet Team China," *Wall Street Journal*, 19 May 2011, http://blogs.wsj.com/chinarealtime/2011/05/19/team-america-meet-team-china-common-ground-on-somali-pirates/ (accessed 8 November 11).

only create a more difficult situation in the future. Somali piracy's continuing threat to global commerce, especially combined with spreading starvation, and terrorism in Somalia, is unacceptable. What is required, at least for now, is additional rules of engagement, allowing military strikes against Somali pirate bases and infrastructure.[27] Because Somali pirates are motivated by ransoms rather than by ideology, maritime forces need to increase both the pirates' risk to harm, and their operating costs to eliminate their operations. Military action can prevent piracy's merger with terrorism.

A combination of all these actions including diplomatic efforts; applying financial pressure; continued capture, prosecution, and punishment of pirates; merchant mariners' continued use of on-board deterrents; use of littoral patrols; and naval military action are needed now. As the Somali piracy threat is lessened in the future, these actions can also be reduced. All of these measures can be accomplished now through the United Nations.

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[27] John Bolton, "Treat Somali Pirates Like Terrorists, Viewing Sea Raids As Law Enforcement Issue Hasn't Worked," *Washington Times*, 14 October 2011, (accessed via Early Bird 17 October 2011).

CONCLUSION

The most likely outcome of the current international counterpiracy efforts off Somalia will not be an exhaustion of piracy, but a form of piracy that is more aggressive attacking merchant vessels, and more violent toward hijacked crews. As history indicates, if governments treat piracy as only a nuisance, piracy will eventually grow into a problem that forces governments to take aggressive maritime action. The possibility of some future linkage to terrorists only makes this problem more serious.

Some success in thwarting pirate attacks is evident by the use of naval escorts and embarked privately contracted armed security, as seen from the falling percentage of successful attacks over the past year.[1] Nevertheless, piracy and armed robbery against ships remain a real and ever-present danger to those who use the seas for global commerce. As long as pirates continue harassing shipping and hijacking ships and crew, maritime forces cannot be satisfied with just deterring piracy. More needs to be done, and history points the way using diplomatic efforts; applying financial pressure; capture, prosecution and punishment of all those involved in piracy; continued use of on-board deterrents; and building organic maritime security capabilities and military. Successful accomplishment of these multi-tiered, coalition-based solutions, as outlined in the previous chapter, will lead to the kind of action and result portrayed in a modification in opening vignette.

On 5 April 2020, in the waters off the coast of Salalah, Oman, the motor vessel (M/V) RISING SUN broadcasted a distress call. The RISING SUN reported pirate skiffs were attacking using gun fire and rocket propelled grenades (RPGs). An Arleigh Burke

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[1] Lee Adamsom, "Piracy Orchestrating The Response," *International Maritime Organization News*, Issue 3, 2011, http://www.imo.org/MediaCentre/NewsMagazine/Documents/IMO-News-03-11-WEB.pdf (accessed 30 October 11).

class destroyer, USS McFAUL (DDG 74) and Omani Warship, AL SHARQUIYAH (B11) responded.

In transit to aid RISING SUN, McFAUL advised the vessel to execute its on-board deterrents, using high speed evasive maneuvering, and best management practices to thwart the pirate attack. Meanwhile, the Omani warship arrived at the location of the attack several hours before McFAUL was able to arrive on scene. Despite having taken RPG damage, the RISING SUN's embarked security team fired warning shots forcing the pirates to break off their attack and returned to their Mother ship, a pirated dhow subsequently identified as the FAIZE OSAMANI. While tracking the pirate dhow, the Omanis witnessed the suspected pirates throwing numerous weapons overboard. As the Omani warship approached the FAIZE OSAMANI, nine people spontaneously jumped off the dhow into the water. The AL SHARQUIYAH immediately rendered assistance to the nine Indian crewmembers who had decided to cast their fate to the sea rather than remain onboard the captured dhow with the suspected pirates.

Upon arriving at the scene, McFAUL attempted to contact the FAIZE OSAMANI, knowing that the suspected pirates were still onboard. McFAUL then deployed her Visit Board Search and Seizure (VBSS) team with a law enforcement officer to take custody of the pirates, and directed the suspected pirates to move to the forward end of the dhow and raise their hands in the air. Under cover from crew served machine guns, the boarding team secured the dhow's pilot house and quickly took control of the suspected pirates. The suspected pirates were thoroughly searched and placed in

Figure 7. USS McFAUL Captures Somali Pirates onboard FAIZE OSAMANI

handcuffs. The boarding team collected evidence, per the standardized internationally
accepted prosecution package, including photographing documents and fingerprints.

The Indian crew was returned to FAIZE OSAMANI and allowed to continue to
their destined port of call. McFAUL received direction from Combined Maritime Forces
naval headquarters to take custody of the suspected pirates on board and transfer them to
the international tribune, established in Djibouti, for trial and prosecution. Following a
speedy trial, the pirates were found guilty of piracy, and imprisoned for 25 years in the
newly established prison facility in Boosaaso, Puntland.

APPENDIX 1:
UNITED NATIONS SECURITY COUNCIL RESOLUTIONS FOR SOMALI COUNTERPIRACY

UNSCR 1816 (2008): This is the first Somalia piracy resolution that authorized naval forces entry into Somalia's territorial waters to pursue pirates; urged States to cooperate with each other, and the IMO, and called on States to cooperate on counterpiracy logistics, jurisdiction, investigation, and prosecution of piracy.

UNSCR 1838 (2008): Called upon States, interested in the security of maritime activities, to take part in the fight against piracy by developing naval vessels and aircraft, and reaffirmed that the Law of the Sea Convention sets out the legal framework to combating piracy.

UNSCR 1846 (2008): Noted the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) which provides for parties to create criminal offenses, establish jurisdiction and extradition of suspects seizing of exercising control over a ship by force; urged States parties to SUA to fully implement their obligations and build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off Somalia.

UNSCR 1851 (2008): Encouraged establishment of an international cooperation mechanism for counterpiracy off Somalia – the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established shortly thereafter, encouraged the creation of a regional counterpiracy coordination center; authorized States to take action against pirate safe havens within Somalia; invite States with maritime forces in the area and the regional States to conclude ship rider agreements.

UNSCR 1897 (2009): Invited consideration of special agreements to take custody of pirates; urged States, in collaboration with the shipping and insurance industries, and the IMO, to develop and implement avoidance, evasion, and defensive best practices when under attack or when sailing in the waters off the coast of Somalia, and urged States to make their citizens and vessels available for forensic investigation in port immediately following an attack.

UNSCR 1918 (2010): Welcomed creation of the Contact Group of Piracy off the Coast of Somalia (CGPCS); called for regional States to criminalize piracy and to consider the prosecution and imprisonment of pirates; commended Kenya for its piracy prosecutions; welcomed implementation of the Djibouti Code of Conduct.

UNSCR 1950 (2010): Stressed the need to combat piracy and its underlying causes, including instability in Somalia; noted with concern ransom payments and the lack of enforcement of the arms embargo; discussed piracy prosecution options; stressed need to support investigation and prosecution of those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia; cited "illegal fishing" for the first time in a piracy specific resolution.

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VITA

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